



JOB ORDER CONTRACTING PROGRAM

REGIONS 2B - 6

BIDDING DOCUMENTS AND INFORMATION

CORPORATE HEADQUARTERS

515 Broadway
Albany, New York
12207-2964

T 518.257.3000
F 518.257.3100

NEW YORK OFFICE

One Penn Plaza, 52nd Fl.
New York, New York
10119-0098

T 212.273.5000
F 212.273.5121

BUFFALO OFFICE

539 Franklin Street
Buffalo, New York
14202-1109

T 716.884.9780
F 716.884.9787

www.dasny.org

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D A S N Y

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

Construction Bidding Requirements

CORPORATE HEADQUARTERS

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www.dasny.org

NOTICE TO BIDDERS
Dormitory Authority – State of New York (“DASNY”)
JOB ORDER CONTRACTS
REGIONS 2B, 3A, 3B, 4A, 4B, 5, 6
DASNY Project # 1000509999

Bid Date: January 22, 2020

Sealed bids for the below work located in the counties listed below will be received by DASNY at its office located at 515 Broadway, Albany, NY 12207. Each bid must be identified, on the outside of the envelope, with the name and address of the bidder and designated as a bid for the project titled above. When a sealed bid is placed inside another delivery jacket, the bid delivery jacket must be clearly marked on the outside **“BID ENCLOSED”** and **“ATTENTION: CONSTRUCTION CONTRACTS UNIT – JENNIFER BURTCH.”** DASNY will not be responsible for receipt of bids which do not comply with these instructions.

Description of Contract/Trade	Region	CR	Counties
Electrical	2B	478	Columbia, Delaware, Dutchess, Greene, Orange, and Sullivan
Electrical	3A	480	Albany, Fulton, Hamilton, Herkimer, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Washington, Warren
Electrical	3B	481	Clinton, Essex, Franklin
Electrical	4A	482	Broome, Cayuga, Chenango, Cortland, Madison, Oneida, Onondaga, Oswego, Tioga and Tompkins
Electrical	4B	483	Jefferson, Lewis and St. Lawrence
General Construction	4B	484	Jefferson, Lewis and St. Lawrence
General Construction	5	485	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates
HVAC	5	486	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates
HVAC	6	489	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming
Electrical	6	487	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming
General Construction	6	488	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming

Notwithstanding the foregoing, DASNY reserves the right, at its sole discretion, to assign Work to any contractor in any geographic area or region.

Individuals submitting bids in person or by private delivery services should allow sufficient time for processing through building security to assure that bids are received prior to the deadline for submitting bids. All individuals who plan to attend bid openings will be required to present government-issued picture identification to building security officials and obtain a visitors pass prior to attending the bid opening. Only those bids in the hands of DASNY, available to be read at **2:00 PM** local time on **January 22, 2020** will be considered. Bids shall be publicly

opened and read aloud. Bid results can be viewed at the DASNY website: <http://www.dasny.org>, forty-eight (48) hours after the Bid Opening.

In accordance with State Finance Law § 139-j and § 139-k, this solicitation includes and imposes certain restrictions on communications between DASNY personnel and a prospective bidder during the procurement process. Designated staff for this solicitation is: **Rene Pedroso, Gordian, 518-852-6901, Chris Enzien, Sr. Project Manager at 518-257-3709 or DASNY Contracts at ccontracts@dasny.org**. Contacts made to other DASNY personnel regarding this procurement may disqualify the prospective bidder and affect future procurements with governmental entities in the State of New York. For more information pursuant to this law, refer to the DASNY website; <http://www.dasny.org> or the OGS website; <http://www.ogs.ny.gov>

A Complete Sets of all Contract Documents shall be posted to DASNY's website: <http://www.dasny.org/rfp-bidopportunities-solicitations/constructionservices/joc-opportunities/new.aspx>.

Reuben R. McDaniel, III, Acting President & CEO
January 6, 2020

BIDDING REQUIREMENTS for CONSTRUCTION
JOB ORDER CONTRACTING
INFORMATION FOR BIDDERS

Section 1.0 - Pre-Bid Meetings

A pre-bid meeting will be held on January 9, 2020 at 11:00 AM – 1:00 PM at Three (3) DASNY Offices. DASNY Albany Office, 515 Broadway, Albany, New York 12207. DASNY Buffalo Office, 539 Franklin Street, Buffalo, New York 14202. DASNY Rochester Office, 3495 Winton Place, Building C, Suite 1, Rochester, New York 14623. Due to the specialized nature of the JOC Program attending the Pre-Bid meeting is strongly recommended. Individuals attending the Pre-Bid meeting should allow sufficient time for processing through building security and will be required to present government-issued picture identification to building security officials and obtain a visitor pass prior to attending the Pre-Mid meeting.

Section 2.0 - Examination of the Contract Documents and Site

- A. Prospective bidders shall examine the Contract Documents carefully and, before bidding, shall make a written request to the Owner and Design Professional, for an interpretation or correction of any ambiguity, inconsistency or error therein which should be discovered by a reasonably prudent bidder. Every request for such interpretation must be received at least ten (10) days prior to the date fixed for the opening of the bid. Such interpretation or correction, as well as additional Contract provisions the Owner shall decide to include, shall be issued in writing by the Owner as an addendum, which shall be available on the DASNY website (www.dasny.org) where the Contract Documents are available for inspection by prospective bidders. Such addendum shall become a part of the Contract Documents and shall be binding on prospective bidders whether or not the bidder receives or acknowledges the actual notice of such addendum. Requirements of the Contract Documents shall apply to addenda.
1. **Deadline for written requests for interpretation or correction of bid documents shall be Tuesday, January 14, 2020 at 2:00 pm. Please submit all written requests for interpretation or correction of bid documents to Chris Enzien, Sr. Project Manager cenzien@dasny.org and Construction Contracts at ccontracts@dasny.org.**
- B. Only interpretations, corrections or additional Contract provisions issued in writing by the Owner as addenda shall be binding. No officer, agent or employee of the Owner is authorized to explain or interpret the Contract Documents by any other method and any such explanation or interpretation, if given, must not be relied upon by the bidder.
- C. At the time of the opening of bids, each bidder shall be presumed to have read and to be familiar with the Contract Documents. The failure or omission of any bidder to receive or to examine any Contract Document shall in no way relieve any bidder from any obligation in respect to the bid of such bidder.

Section 3.0 - Qualifications of Bidder

- A. The Owner may make such investigation as the Owner deems necessary to determine the responsibility of any bidder or to determine the ability of any bidder to perform the Work. Bidders shall furnish to the Owner all information and data required by the Owner, including complete financial data, within the time and in the form and manner required by the Owner. The Owner reserves the right to reject any bid if the evidence required by the Owner is not submitted as required or if the evidence submitted by or the investigation of any bidder fails to satisfy the Owner that the bidder is responsible, or is able or qualified to carry out the obligations of the Contract or to complete the Work as contemplated.

BIDDING REQUIREMENTS for CONSTRUCTION
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B. Contract Experience Requirements for Electrical Contractor:

1. The Bidder or its Principals for the Electrical Contractor contract shall meet the following minimum requirements.
 - a. The Bidder shall have completed or substantially completed in each of the last two years at least five (5) projects each with a contract value of at least \$200,000.
 1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
 2. The Bidder must have employed his own workforce for at least 30% of the labor for the trade on which they are bidding.
 - b. The Bidder shall have had in each of the last two years annual gross revenues at least equal to the Maximum Contract Value for the contract bid. Revenues must be from Projects where they were the prime or subcontractor for the type of Work they are bidding.
 - c. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

C. Contract Experience Requirements for Heating, Ventilation, Air Conditioning (HVAC) Contractor:

1. The Bidder or its Principals for the HVAC contract shall meet the following minimum requirements.
 - a. The Bidder shall have completed or substantially completed in each of the last two years at least five (5) projects each with a contract value of at least \$200,000.
 1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
 2. The Bidder must have employed his own workforce for at least 30% of the labor for the trade on which they are bidding.
 - b. The Bidder shall have had in each of the last two years annual gross revenues at least equal to the Maximum Contract Value for the contract bid. Revenues must be from Projects where they were the prime or subcontractor for the type of Work they are bidding.
 - c. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

D. Contract Experience Requirements for Plumbing Contractor:

1. The Bidder or its Principals for the Plumbing contract shall meet the following minimum requirements.

**BIDDING REQUIREMENTS for CONSTRUCTION
JOB ORDER CONTRACTING
INFORMATION FOR BIDDERS**

- a. The Bidder shall have completed or substantially completed in each of the last two years at least five (5) projects each with a contract value of at least \$200,000.
 1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
 2. The Bidder must have employed his own workforce for at least 30% of the labor for the trade on which they are bidding.
2. The Bidder shall have had in each of the last two years annual gross revenues at least equal to the Maximum Contract Value for the contract bid. Revenues must be from Projects where they were the prime or subcontractor for the type of Work they are bidding.
3. The Bidder shall be a Licensed Plumbing Contractor in New York City. (Region 1 only)
4. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

E. Contract Experience Requirements for General Contractor (GC):

1. The Bidder or its Principals for the GC contract shall meet the following minimum requirements.
 - a. The Bidder shall have completed or substantially completed in each of the last two years at least five (5) projects each with a contract value of at least \$200,000.
 1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
 2. The Bidder must have employed his own workforce for at least 30% of the labor for the trade on which they are bidding.
 - b. The Bidder shall have had in each of the last two years annual gross revenues at least equal to the Maximum Contract Value for the contract bid. Revenues must be from Projects where they were the prime or subcontractor for the type of Work they are bidding.
 - c. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

Section 4.0 - Executive Order No 170.1 – Uniform Guidelines for Responsibility Determinations

The criteria contained in Executive Order No. 170.1 will also be applied in the bid review process. In the event of any conflict between the criteria in Executive Order No. 170.1 and the criteria in the Contract Documents, the stricter criteria shall apply.

**BIDDING REQUIREMENTS for CONSTRUCTION
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Section 5.0 - Executive Order No 125 – NYS Vendor Responsibility Questionnaire

- A. For any contract \$10,000 or more, the New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) shall be submitted by the apparent low bidder to the Owner. Executive Order No. 125 dated May 22, 1989 is found at 9 NYCRR §4.125.
- B. The bidder shall submit a New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) to the Owner for any subcontractor proposed for the Work upon request of the Owner.
- C. The Owner recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System (the “System”). To enroll in and use the System, see the System Instructions at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for System assistance, contact the Office of the State Comptroller’s (“OSC”) Help Desk at 866-370-4672 or 518- 408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the System website www.osc.state.ny.us/vendrep or may contact the Owner (DASNY) or OSC’s Help Desk for a copy of the paper form.

Section 6.0 – 2005 Procurement Lobbying Law

- A. Pursuant to provisions of the General Conditions, Article 18 – 2005 Procurement Lobbying Law, for any contract \$15,000 or more, the 2005 PROCUREMENT LOBBYING LAW – CERTIFICATION form is to be submitted with the bid.
- B. All bidders, domestic and foreign, must be in compliance with New York State business registration requirements. Contact the NYS Department of State regarding compliance.

Section 7.0 - Approval of Subcontractors/Subcontract Limits

- A. Pursuant to provisions of the General Conditions, Article 6 - Subcontracts, bidders shall within the time specified by the Owner, submit to the Owner the names of the Subcontractors which the bidder proposes to use on the project. The Owner reserves the right to reject any bid if the names of proposed Subcontractors, or additional subcontractor information, are not submitted as required.
- B. Self-Performance Requirements/Subcontracting Limits
 - 1. The contractors shall perform at least the dollar value as stated in the table below of the work performed under the entire contract with its own forces and not with subcontractors. The purchase of materials, not installed with the contractor’s own forces, will not be counted for purposes of determining whether the contractor met the goal as stated in the table below. The cost of supervising subcontractors will also not count towards the goal as stated in the table below.

Electrical (all applicable regions)	30 %
HVAC (all applicable regions)	30 %
Plumbing (all applicable regions)	30%
General Contractor (all applicable regions)	30 %

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The Director, Procurement may, in writing, modify these requirements where the Director determines it is in the best interest of the owner.

Section 8.0 - Opportunity Programs Requirements

- A. Pursuant to provisions of the General Conditions, Article 20 – Opportunity Programs and Article 21 – Service-Disabled Veteran Owned Businesses, the Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS and Article 17-B, SERVICE DISABLED VETERAN OWNED BUSINESSES. These requirements will include: equal employment opportunities for minority group members and women (EEO), plus opportunities for minority and women-owned business enterprises (M/WBE). The Contractor’s demonstration of good faith efforts shall also be a part of these requirements.
- B. The Owner has adopted a goal oriented approach to ensure employment of EEO & M/WBE at a level commensurate with their capability and availability. The Owner has determined that the goals for EEO & M/WBE participation in the Work of the Contract are follows:

Description	Region(s)	MBE %	WBE %	SDVOB %	EEO%
Electrical	2B	18 %	12 %	6 %	25 %
Electrical	3A	18 %	12 %	6 %	14 %
Electrical	3B	18 %	12 %	6 %	8 %
Electrical	4A	18 %	12 %	6 %	8 %
Electrical	4B	18 %	12 %	6 %	8 %
General Construction	4B	18 %	12 %	6 %	8 %
General Construction	5	18 %	12 %	6 %	8 %
HVAC	5	18 %	12 %	6 %	8 %
HVAC	6	18 %	12 %	6 %	14 %
Electrical	6	18 %	12 %	6 %	14 %
General Construction	6	18 %	12 %	6 %	14 %

- C. The low bidder shall submit the following as referenced in the Contract Documents, within the specified time frames:
1. Statewide Utilization Management Plan (“Utilization Plan”), Refer to Article 20 – Opportunity Programs, specifically Section 20.03 for Submittal Requirements;
 2. Utilization Plan Cover Sheet
 3. Standard Equal Employment Opportunity Policy Statement
 4. Permanent Employee Distribution
 5. Scope Verification Form
 6. Monthly Workforce Utilization Report
 7. Compliance Report

**BIDDING REQUIREMENTS for CONSTRUCTION
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D. Failure to provide the above plans and the aforementioned information may be cause for rejection of the bid.

Section 9.0 - Preparation of Bids

- A. Bids must be submitted on the Form of Bid supplied by the Owner in the bidder’s full legal name or the bidder’s full legal name plus a registered assumed name. Bids shall be enclosed in a sealed envelope, addressed to the Owner, and marked with the name and address of the bidder, and the name of the Project. All blank spaces for bid prices must be filled in, using both words and figures, words to take precedence over figures. Conditional bids shall not be accepted. Bids shall not contain any recapitulation of the Work to be done. No oral, facsimile transmittal, electronic or telephonic bids or modifications of bids shall be considered. Bids shall contain an original signature of the bidder in the space provided on the Form of Bid.
- B. Bids that are illegible or that contain omissions, alterations, additions, or items not called for in the bidding documents may be rejected as not responsive. Any bid which modifies, limits, or restricts all or any part of such bid, other than as expressly provided for in the Contract Documents, may be rejected as not responsive.
- C. The Owner may reject any bid not prepared and submitted in accordance with the provisions of the Contract Documents.
- D. Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof and any bid received after such time and date shall not be considered.
- E. No bidder may withdraw a bid within sixty (60) days after the actual date of the opening thereof.
- F. No action or proceeding concerning in any way any bid for the Contract or the Contract shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue.

Section 10.0 – Minimum and Maximum Contract Values and Bid Security

A. Each bid must be accompanied by a certified check of the bidder made payable to the Dormitory Authority or by a bid bond prepared on the form of bid bond included in the Contract Documents, duly executed by the bidder as principal, and the surety thereon. Bidder failure to provide bid security as prescribed, may result in rejection of the bid. Bid bonds submitted as bid security shall contain an original signature of both the bidder and the surety providing the bid bond in the space provided on the Form of Bid Bond. The surety shall be authorized to do business in the State of New York by the New York State Department of Financial Services, rated at least A- by A. M. Best and Company, or meet such other requirements as are acceptable to the Owner in its sole and exclusive discretion.

1. The Minimum and Maximum Contract Value and Bid Security of each contract to be awarded are stated below.

Region	CR #	Description	PLA	Bid Security	Maximum Contract Value per Contract Term
2B	478	Electrical	No	\$25,000	\$2,000,000

**BIDDING REQUIREMENTS for CONSTRUCTION
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3A	480	Electrical	No	\$25,000	\$2,000,000
3B	481	Electrical	No	\$25,000	\$2,000,000
4A	482	Electrical	No	\$25,000	\$2,000,000
4B	483	Electrical	No	\$25,000	\$2,000,000
4B	484	General Construction	No	\$25,000	\$10,000,000
5	485	General Construction	No	\$25,000	\$2,000,000
5	486	HVAC	No	\$25,000	\$2,000,000
6	489	HVAC	No	\$25,000	\$2,000,000
6	487	Electrical	No	\$25,000	\$2,000,000
6	488	General Construction	No	\$25,000	\$6,000,000

2. The Minimum Contract Value for all contracts is \$0.
 3. For Contracts less than \$1,000,000 the Contractor is expected receive Job Orders issued totaling at least \$25,000 during contract period.
 4. For Contracts equal to or greater than \$1,000,000 the Contractor is expected receive Job Orders issued totaling at least \$50,000 during contract period.
 5. A separate Bid Bond is required for each Bid.
 6. The Contractor will not be issued Job Orders exceeding the Maximum Contract Value during the contract period. However, the Contractor is not guaranteed to receive this volume of Work.
- B. Any certified checks submitted as bid security shall be returned to all except the three (3) lowest bidders after the opening of bids, and the remaining checks shall be returned to the three (3) lowest bidders after the Owner and the accepted bidder have executed the Agreement, or if no Agreement has been executed within sixty (60) days after the date of the opening of bids, upon demand of the bidder at any time thereafter so long as such bidder has not been notified of the acceptance of such bid.
- C. Bid Bonds of all but the bidder executing the Agreement shall be destroyed by the Owner either 1) after the Owner and the accepted bidder have executed the Agreement, or 2) if no Agreement has been executed, sixty (60) days after the date of the opening of bids.
- D. Bidders *must* include with their bid a letter from their Surety attesting to their overall and per project bonding limits.**

Section 11.0 – Compliance With Laws

The bidder shall sign and submit with the bid the COMPLIANCE WITH LAWS – CERTIFICATION form included in the Contract Documents.

Section 12.0 - Bid Designation

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- A. Each bid shall bear on the outside of the envelope the name of the bidder, its address, its telephone number and designated as bid for the following:

NAME OF PROJECT: Job Order Contracting Program

And

CR 478	Region 2B	Electrical
CR 480	Region 3A	Electrical
CR 481	Region 3B	Electrical
CR 482	Region 4A	Electrical
CR 483	Region 4B	Electrical
CR 484	Region 4B	General Construction
CR 485	Region 5	General Construction
CR 486	Region 5	HVAC
CR 489	Region 6	HVAC
CR 487	Region 6	Electrical
CR488	Region 6	General Construction

Write in appropriate Contract - ONLY one per envelope

- B. Bids submitted via Mail, Express Service, or Messenger Service shall indicate on the exterior of the envelope the words "BID ENCLOSED; FOR TRADE: _____ ; REGION: _____ ; CR NUMBER: _____ " (Fill In Appropriate Trade, Region and CR Number).
- C. *No more than ONE Bid per envelope.*
- D. Notwithstanding the contract designation, the Owner reserves the right, at its sole discretion, to assign Work to any contractor in any county covered by any of the contracts herein bid.

Section 13.0 - Award of Contract

- A. Award of the Contract shall be made to the bidder submitting the lowest bid, if:
1. In the opinion of the Owner, the bid is responsive to the bid solicitation, and such bidder is qualified to perform the Work involved, is responsible and reliable.
 2. The bidder submits required documents as described under Section 17.0 – Forms and Documents.
 3. On all contracts, the bidder furnishes within Seventy-two (72) hours after low bidder notification, documentation of efforts to encourage the participation of New York State enterprises as suppliers and subcontractors. Also, in a post-award compliance report, furnish documentation of efforts to provide notification to New York State residents of employment opportunities, through the New York State Job Service Division, or provide such notification in a manner consistent with existing collective bargaining contracts or agreements.

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- B. The Owner reserves the right to reject any bid or all bids, to waive any informalities or irregularities or omissions in any bid received or to afford any bidder an opportunity to remedy any informality or irregularity.
- C. As part of the Job Order Contracting Program, the Owner reserves to itself, in its sole judgment, the right to limit the number of Job Order Contracts awarded to any single bidder or contractor. Subject to the limitations appearing above and elsewhere in this bid package, the contracts will be awarded, if at all, to the combination of bids resulting in the least overall cost to the Owner.
- D. The execution of the Agreement shall not be construed as a guarantee by the Owner that the plant, equipment and the general scheme of proposed operations of a bidder is either adequate or suitable for the satisfactory performance of the Work or that other data supplied by a bidder is accurate.

Section 14.0 - Required Bonds

- A. The Contractor shall provide an initial Payment Bond in the amount of \$50,000 for the payment of all persons performing labor or providing materials in connection with the Work of the Contract. Within ten (10) days of the issuance of a Job Order and Payment Bond form by the Owner, the Contractor shall replace the initial Payment Bond with a Payment Bond in the amount of at least equal to 100% of the Job Order amount for the payment of all persons performing labor or providing materials in connection with the Work of the Job Order. The Owner reserves the right to cancel the Job Order in the event that the Payment Bond is not provided within ten (10) days as required herein. The Owner, in its discretion, may require the Contractor to provide a Performance Bond in an amount at least equal to 100% of the Job Order amount as security for the faithful performance of the Job Order.
- B. If at any time the Owner, in its sole and exclusive discretion, shall become dissatisfied with any surety or sureties upon the Performance Bond or the Payment Bond, or if for any other reason said bonds shall cease to be adequate security to the Owner, the Contractor shall, within five (5) calendar days after written notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.
- C. The surety company, on all bonds, shall be authorized to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner in its sole and exclusive discretion.

Section 15.0 - Damages for Failure to Enter into Agreement

The successful bidder, upon failure or refusal to sign and deliver the Agreement and bonds required within fourteen (14) days after such bidder has received the Letter of Intent, shall forfeit to the Owner as damages for such failure or refusal, the bid security or the difference between the bidder's Award Criteria Figure and the next lowest bidder's Award Criteria figure times the Maximum Contract Value, whichever sum shall be higher.

Section 16.0 - Substantial Completion and Liquidated Damages

- A. Total time of completion for the Job Order Contracting Program is:

BIDDING REQUIREMENTS for CONSTRUCTION
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1. One year from the issuance of a Notice of Contract Award or when the Maximum Contract Value has been ordered, whichever occurs first.
 2. Option Period: Both the Authority and the Contractor must mutually agree to extend the contract for an option period. The term of the option period is one year or when the Maximum Contract Value, or revised Maximum Contract Value, is ordered, whichever occurs first.
- B. Work set forth in individual Job Orders under the contract shall be commenced and completed as stated in the Job Orders.
- C. Liquidated Damages may be assessed on a Job Order by Job Order basis at a rate established in the Job Order.

Section 17.0 – Forms and Documents

Each bidder shall complete and submit to the Owner, pursuant to provisions stated in the Information for Bidders, the following forms and documents, which are hereby made a part of the Contract Documents:

Bidding Requirements: each bidder shall submit the following at time of bid:

1. Form of Bid;
2. 2005 Procurement Lobbying Law - Certification
3. Code of Business Ethics - Certification
4. Compliance with Laws - Certification
5. W-9 Form
6. Bid Security
7. **Surety Letter attesting to Bidder's overall and per project bonding limits.**

Contract Forms for Construction: the successful bidder shall submit the following for execution of the Contract:

1. Required Insurance Form – within three (3) days after low bidder notification
2. New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2)
3. Agreement with Payment & Performance Bonds - within fourteen (14) days after Letter of Intent

As job orders are issued the successful bidder must submit the following:

1. Utilization Plan with written justification if a Request for Waiver is applicable Utilization Plan Cover Sheet
2. Scope Verification Form
3. Monthly Workforce Utilization Report

FORM OF BID

REGION 2B, 3A, 3B, 4A, 4B, 5, 6

(Contract for Total of All Materials and Labor)

TO THE DORMITORY AUTHORITY - STATE OF NEW YORK
(Owner)

For _____ **JOB ORDER CONTRACTING PROGRAM** _____ (Title of Project). Pursuant to and in compliance with the Owner's advertisement for bids dated _____ and the Contract Documents relating hereto, the undersigned hereby offers to Provide all plant, labor, materials, supplies, equipment, and other facilities and things necessary or proper for, or incidental to, the Work as required by, and in strict accordance with, the applicable provisions of the _____ (Write in applicable Trade) Contract Documents for Region _____ (Write in applicable Region) CR No. _____ (Write in applicable CR number, not one CR per bid form) , including written changes thereto, and addenda issued by the Owner and sent to the undersigned or delivered to the bidder prior to the opening of bids, whether received by the undersigned or not, using the following Adjustment Factors:

- 1. Normal Working Hours: Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

_____. _____
(Specify to four decimal places)

- 2. Other Than Normal Working Hours: Contractor shall perform tasks during other than normal working hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

_____. _____
(Specify to four decimal places)

**** NOTE: Must be at least 0.1000 greater than Normal Working Hours Adjustment Factor ****

ALL WORK

- 3. Non Pre-Priced Work: Contractor shall perform Non Pre-Priced Work multiplied by the adjustment factor of:

_____. _____
(Specify to four decimal places)

**** NOTE: Must be no less than 1.0500 and no greater than 1.2000 ****

AWARD CRITERIA FIGURE

- 4. Award Criteria Figure: Contractor shall include, in the space provided below, the Award Criteria Figure (see Formula under BASIS OF CONTRACT AWARD, AWARD FORMULA).

Award Criteria Figure = _____.
 (Specify to four decimal places)

BASIS OF CONTRACT AWARD

The following formula has been developed for the sole purpose of evaluating bids and awarding the Contract. Each bidder must complete the following Award Formula and enter the Award Criteria Figure on the preceding page.

AWARD FORMULA

- Line 1. Normal Working Hours

- Line 2. Multiply Line 1 by .85

- Line 3. Other Than Normal Working Hours

- Line 4. Multiply Line 3 by .12

- Line 5. Non Pre Priced Work

- Line 6. Multiply Line 5 by .03

- Line 7. Summation of lines 2, 4, and 6
_____(Award Criteria Figure)

A contract will be awarded to the responsive and responsible bidder with the lowest Award Criteria Figure. Intermediate steps to calculate the Award Criteria Figure will not be rounded off for purposes of determining the low bidder. The Owner reserves the right to revise all arithmetic errors in calculations for correctness.

The bid may be withdrawn at any time prior to the scheduled time for the opening of bids or any authorized postponement thereof.

If the Letter of Intent is sent or delivered to the undersigned within sixty (60) days after the date of opening of the bids, or any time thereafter before the bid is withdrawn, the undersigned shall, within fourteen (14) days after the date of such Letter of Intent, execute and deliver an Agreement in the form included in the Contract Documents.

The undersigned hereby designates as the undersigned's office to which the Letter of Intent may be sent or delivered:

Name: _____

Firm's Legal Name: _____

Street Address: _____

PO Box #: _____

City, State, Zip Code: _____

Email Address: _____

Non-collusive Bidding Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, 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:

1. The prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in the bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

Dated: _____

Firm's Legal Name: _____

Street Address: _____

City, State, Zip Code: _____

By: _____
(Signature of Officer)

Title: _____

Officer Name: _____
(Print)

Phone Number: _____

Fax Number: _____

Email Address: _____

Taxpayer ID or Social Security Number: _____

End of Document

BIDDING REQUIREMENTS for CONSTRUCTION

2005 PROCUREMENT LOBBYING LAW - CERTIFICATION

The bidder shall submit this form at time of bid.

The bidder must check all applicable boxes.

A. Bidder affirmation relating to procedures governing permissible contacts

1. The bidder: affirms does not affirm

that it understands and has to date and agrees hereinafter to comply with the Dormitory Authority's procedures relative to permissible contacts for this procurement as required by State Finance Law § 139-j (3) and § 139-k (6) (b).

B. Bidder disclosure of findings of non-responsibility and prior contract terminations or withholdings under the 2005 Procurement Lobbying Law

1. Has any "governmental entity," as defined in State Finance Law § 139-j and § 139-k made a finding in the last four years that the bidder was not responsible?

No Yes

2. If yes, was the basis for any such finding(s) the intentional provision of false or incomplete information required by State Finance Law § 139-j and § 139-k, and/or the failure to comply with the requirements of State Finance Law § 139-j (3) relating to permissible contacts?

No Yes

3. If yes, provide details regarding each finding of non-responsibility below. (Attach additional pages, if necessary).

Governmental Entity: _____

Date of Finding: _____

Basis of Finding:

BIDDING REQUIREMENTS for CONSTRUCTION

2005 PROCUREMENT LOBBYING LAW - CERTIFICATION

4. Has any “governmental entity” as defined in State Finance Law § 139-j and § 139-k terminated or withheld a procurement contract with the Bidder due to the intentional provision of false or incomplete information required by such Laws and/or the failure to comply with the requirements of State Finance Law § 139-k(3) relating to permissible contacts?

No

Yes

5. If yes, provide details below. (Attach additional pages, if necessary).

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding of Contract:

C. Certification

The bidder acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001; and states that all information provided to the Dormitory Authority with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

(Officer’s Signature)

(Date)

Firms Legal Name: _____

Print Officer’s Name: _____

Title: _____

BIDDING REQUIREMENTS for CONSTRUCTION

CODE of BUSINESS ETHICS - CERTIFICATION

The bidder shall submit this form at time of bid.

A. Ethics Programs

1. The Dormitory Authority of the State of New York (the “Authority”), a public-benefit corporation, expects the highest degree of ethical business conduct by its employees and the many contractors, consultants and vendors with whom it interacts on behalf of its clients, bondholders and the people of the State of New York. The Authority, by mandate of its Board of Directors, administers a comprehensive corporate integrity program to ensure that, as public officers, Authority employees at all levels perform their official duties consistent with the requirements of the *New York State Public Officers Law*; other applicable laws, rules, and regulations; and policies of the Authority.
2. The Authority encourages and supports a fair, open and honest business relationship with its contractors, consultants and vendors based on quality, service and cost. Moreover, the Authority believes that a “level playing field” in the marketplace can only be achieved through adherence to ethical business practices by all participants involved in the process.
3. To promote a working relationship with the Authority based on ethical business practices, contractors, consultants and vendors are expected to:
 - a. furnish all goods, materials and services to the Authority as contractually required and specified;
 - b. submit complete and accurate reports to the Authority and its representatives as required;
 - c. not seek, solicit, demand or accept any information, verbal or written, from the Authority or its representatives that provides an unfair advantage over a competitor;
 - d. not engage in any activity or course of conduct that restricts open and fair competition on Authority-related projects and transactions;
 - e. not engage in any course of conduct with Authority employees or representatives that constitutes a conflict of interest or creates the appearance of a conflict of interest;
 - f. not offer any unlawful gifts or gratuities to Authority employees or representatives, or engage in bribery or other criminal activity; and
 - g. report to the Authority any activity by an Authority employee or contractor, consultant or vendor of the Authority that is inconsistent with the Authority’s *Code of Business Ethics*.
4. The Authority encourages its contractors, consultants and vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial stability, the Authority will consider the *corporate integrity* of all contractors, consultants and vendors prior to the awarding of contracts or issuing of purchase orders.

B. Conduct of Authority Employees

Authority employees are expected to conduct business with contractors, consultants and vendors in a fair, consistent and professional manner. The Authority’s Code of Business Ethics and Employee Conduct entitled *Serving Responsibly*, and other Authority policies and procedures, guide the manner in which Authority employees are required to interact with contractors, consultants and vendors. Additionally, the New York State Public Officers Law sets forth legal parameters within which Authority employees must perform their official duties with respect to, among other things, conflicts of interest and the acceptance of gifts.

BIDDING REQUIREMENTS for CONSTRUCTION

CODE of BUSINESS ETHICS - CERTIFICATION

C. Limits on Gifts to Authority Employees

1. Pursuant to Section 73(5) of the Public Officers Law, no person shall offer any gift having more than a nominal value to an Authority employee under circumstances in which it:
 - a. could be reasonably inferred the gift was intended to influence the employee in the performance of his or her official duties; or
 - b. could reasonably be expected to influence the employee in the performance of his or her official duties; or
 - c. was intended as a reward for any official action on the part of the employee.
2. A gift is anything more than nominal in value, in any form, given to an Authority employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise. Any firm or its agents, either doing business or seeking to do business with the Authority (contractors, consultants, vendors, etc.), is prohibited from directly or indirectly offering or giving any gifts, even gifts of nominal value, to Authority employees as such gifts are deemed to be *per se* improper.
3. As is stated in the *Prohibited Interests* section of the Construction and Consultant Contract documents, violations of these gift provisions may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

D. Employing Relatives of Authority Employees

Although contractors, consultants and vendors may employ relatives of Authority employees, the Authority must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Authority reserves the right to request that contractors, consultants and vendors modify the work assignment of an Authority employee's relative where a conflict of interest, or the appearance thereof, is deemed to exist. Please be advised that Authority employees are required to disclose information regarding the hiring of relatives by contractors, consultants and vendors and recuse themselves from matters that may present a conflict of interest. For purposes of this document, the term "relatives" refers to spouses, domestic partners, parents, children, sisters, brothers, sisters-in-law, brothers-in-law, parents-in-law, sons/daughters-in-law, stepparents, stepchildren, aunts, uncles, nieces, nephews, first cousins, grandparents by blood relationship or by marriage, or persons residing in the same household.

E. Hiring Former Authority Employees

Contractors, consultants and vendors may hire former Authority employees. However, as a general rule, former employees of the Authority may neither appear nor practice before the Authority, nor receive compensation for services rendered on a matter before the Authority, for a period of *two years* following their separation from Authority service. In addition, former Authority employees are subject to a "*lifetime bar*" from appearing before the Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Authority. Violations will be referred to the New York State Commission on Public Integrity for appropriate action.

BIDDING REQUIREMENTS for CONSTRUCTION

CODE of BUSINESS ETHICS - CERTIFICATION

F. Questions

Questions relating to these guidelines should be directed to the responsible Authority Project Manager or Program Director, Director of Procurement, the Authority's Ethics Officer or Director of Internal Affairs. To contact any of these individuals please call: (518) 257-3000.

When in doubt, please seek guidance.

G. Certification

I have read the foregoing and agree to comply with the Authority's Code of Business Ethics. I further acknowledge that failure to comply shall justify contract termination by the Authority and may result in the rejection of bids or proposals for future work with the Authority.

(Officer's Signature) (Date)

Firm's Legal Name: _____

Print Officer's Name _____

Title _____

BIDDING REQUIREMENTS for CONSTRUCTION

COMPLIANCE WITH LAWS - CERTIFICATION

The bidder shall submit this form at time of bid.

The bidder agrees that, except in any instance in which the bidder has obtained identical certifications from proposed Subcontractors for specific time periods, such bidder shall obtain identical certifications from proposed Subcontractors prior to the award of subcontracts exceeding Ten Thousand Dollars (\$10,000), and that such bidder shall retain such certifications in the files of such bidder.

A. Non Segregated Facilities

The bidder certifies that such bidder does not, nor shall not, maintain or provide for the employees of such bidder any segregated facilities at any establishments, and that the bidder does not, nor shall not, permit the employees of such bidder to perform the services of such employees at any location under the control of such bidder where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the nondiscrimination clauses of the Contract.

B. Non-discrimination in Employment in Northern Ireland

The bidder stipulates that it, and any individual or legal entity in which the bidder holds a ten percent (10%) or greater ownership interest, and any such entity that holds such an interest in the bidder, either:

1. has no business operations in Northern Ireland; or
2. shall take all lawful steps in good faith to conduct any business operations it has or in which it has such an interest in Northern Ireland in accordance with the MacBride Fair Employment Principles as set forth in Chapter 807 of the Laws of 1992 and shall permit any independent monitoring of its compliance with said Principles.

C. Federal Equal Employment Opportunity Act

The bidder attests to its compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

D. Commitment to Opportunity Programs

The bidder agrees to be bound in accordance with NYS Executive Law Article 15-A, and in conformance with Regulations promulgated by the Division of Minority and Women's Business Development of the NYS Department of Economic Development. A list of NYS certified M/WBEs may be obtained from the ESDC directory of certified businesses located at www.nylovesmwbe.ny.gov.

E. Transfer of Offset Credits

The bidder acknowledges notice that the Dormitory Authority may assign or otherwise transfer offset credits created by this contract to third parties located in New York State.

BIDDING REQUIREMENTS for CONSTRUCTION

COMPLIANCE WITH LAWS - CERTIFICATION

F. Certification

The bidder acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001; and states that all information provided to the Dormitory Authority is complete, true and accurate.

_____ (Officer's Signature) _____ (Date)

Firms Legal Name: _____

Print Officer's Name: _____

Title: _____

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.					
	2 Business name/disregarded entity name, if different from above					
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):			
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC	<input type="checkbox"/> C Corporation	<input type="checkbox"/> S Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust/estate	Exempt payee code (if any) _____
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____					
	Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.					
	<input type="checkbox"/> Other (see instructions) ▶ _____					Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.			Requester's name and address (optional)			
6 City, state, and ZIP code						
7 List account number(s) here (optional)						

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-			-				
or											
Employer identification number											
				-							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

KNOW ALL PERSONS BY THESE PRESENTS, that we:

_____ as Principal,
(Legal Title of the Bidder)

and _____ as Surety,
(Legal Title of the Surety)

are hereby held and firmly bound unto the Dormitory Authority - State of New York in the penal sum of:

_____,
(Amount)

{write in the amount as required from Information to Bidders ie., Fifty Thousand Dollars (\$50,000)/Twentyfive Thousand Dollars (\$25,000)}, or in the full and just sum of difference between the bidder's Award Criteria Figure and the next lowest bidder's Award Criteria Figure times the Maximum Contract Value whichever sum shall be lower, for the payment of which, well and turlly to be made, we herby jointly and severally bind ourselves, heirs, executors, administrators, successors, and assigns.

Signed this ____ day of _____ 20__.

Whereas the Principal has submitted to the Dormitory Authority - State of New York a certain bid, made a part hereof, to enter into a Contract in writing for the:

(Title of Project)

NOW, THEREFORE the conditions of this obligation is such that::

A. This obligation shall be void:

1. If said bid shall be rejected or in the alternate.
2. If said bid shall be accepted and the Principal shall execute and deliver the Agreement in the form attached hereto (properly completed; in accordance with said bid) and shall furnish bonds for the faithful performance of said Contract by the Principal, and for the payment of persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the Contract created by the acceptance of said bid.

Otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

B. The penal sum of this Bond is in addition to any other Bond furnished by the Contractor and in no way shall be impaired or affected by any other Bond.

C. The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and said Surety's Bond in no way shall be impaired or affected by any extension of time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF:

the parties hereto have executed this Bond the day and year first above written.

IN THE PRESENCE OF:

(Principal)

(Surety)

(Signature)

(Signature)

(Title)

(Title)

(Address)

(Address)

(City, State, Zip Code)

(City, State, Zip Code)

(Phone Number & FAX Number)

(Phone Number & FAX Number)

(Email Address)

(Email Address)

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND IF A CORPORATION

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

_____ (street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

_____ (street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

DASNY

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

Construction Contract Forms

CORPORATE HEADQUARTERS

515 Broadway
Albany, New York
12207-2964

T 518.257.3000
F 518.257.3100

NEW YORK OFFICE

One Penn Plaza, 52nd Fl.
New York, New York
10119-0098

T 212.273.5000
F 212.273.5121

BUFFALO OFFICE

539 Franklin Street
Buffalo, New York
14202-1109

T 716.884.9780
F 716.884.9787

www.dasny.org

UPSTATE: 515 Broadway * Albany, NY 12207-2964 * Phone: (518) 257-3706 Fax: (518) 257-3100
 DOWNSTATE: One Penn Plaza, 52nd Floor * New York, NY * 10119-0098 * Phone: (212) 273-5038 Fax: (212) 273-5121

UTILIZATION PLAN

ORIGINAL Submission REVISED Submission

A. PRIME INFORMATION: CONTRACTOR CONSULTANT VENDOR

Name: _____
 Address: _____ City: _____ State: _____ Zip: _____
 Contact Person: _____ Telephone Number: _____ Fax Number: _____
 E-Mail Address: _____

PROJECT INFORMATION: Project Number: _____ Work Authorization# (if applicable) _____

Contract / Bid Number: _____ Contract / Bid Amount: \$ _____
 MBE Goal % _____ \$ _____ WBE Goal % _____ \$ _____

Facility Name: _____
 Building(s): _____
 Address: _____
 City: _____ County: _____ Zip: _____
 Work Description: _____

1. Schedule of proposed subcontract work:

Trade/Service	Amount	Trade/Service	Amount
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

2. Description of Equipment, Materials or Supplies

Description of Equipment, Materials or Supplies	Estimated Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

UTILIZATION PLAN

B. List ALL subcontractors and suppliers you plan to utilize during the performance of this contract:

***** NOTE:** *A completed Scope Verification Form AAP 10.0 (06/10) must accompany this Utilization Plan for each M/WBE and SDVOB subcontractor listed. A blank form is included in the Contract Documents. Incomplete or non-submittal of the form(s) will delay approval of the Utilization Plan.*

- Firm Name: Value of Proposed Award: \$
Address: Fed ID No.
City: State: Zip: Estimated Start Date:
Contact Person: Telephone:
Email Address: Type of Firm: MBE WBE SDVOB
Work Description: OTHER

- Firm Name: Value of Proposed Award: \$
Address: Fed ID No.
City: State: Zip: Estimated Start Date:
Contact Person: Telephone:
Email Address: Type of Firm: MBE WBE SDVOB
Work Description: OTHER

- Firm Name: Value of Proposed Award: \$
Address: Fed ID No.
City: State: Zip: Estimated Start Date:
Contact Person: Telephone:
Email Address: Type of Firm: MBE WBE SDVOB
Work Description: OTHER

- Firm Name: Value of Proposed Award: \$
Address: Fed ID No.
City: State: Zip: Estimated Start Date:
Contact Person: Telephone:
Email Address: Type of Firm: MBE WBE SDVOB
Work Description: OTHER

- Firm Name: Value of Proposed Award: \$
Address: Fed ID No.
City: State: Zip: Estimated Start Date:
Contact Person: Telephone:
Email Address: Type of Firm: MBE WBE SDVOB
Work Description: OTHER

UTILIZATION PLAN

(subcontractor/supplier continuation page)

- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|

UTILIZATION PLAN

(subcontractor/supplier continuation page)

- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|
- | | |
|---|--|
| ▪ Firm Name:
Address:
City: State: Zip:
Contact Person:
Email Address:
Work Description: | Value of Proposed Award: \$
Fed ID No.
Estimated Start Date:
Telephone:
Type of Firm: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB
<input type="checkbox"/> OTHER |
|---|--|

Type Name of Principal or Officer

Type Title of Principal or Officer

Signature of Principal or Officer

Date

UTILIZATION PLAN

C. REQUEST FOR WAIVER

TOTAL WAIVER PARTIAL WAIVER N/A – GOALS ARE MET

MBE Waiver (%) Requested ___ WBE Waiver (%) Requested ___

NOTE: *On Professional Service Term and Construction JOC Contracts, the overall goal percentages are applied to the entire contract dollar value. Therefore, if a waiver is requested for an individual work order, it is your responsibility to make up the shortfall on future work orders in order to maintain the overall M/WBE goal percentage for the contract. In addition, your firm should maintain a record of the M/WBE goal attainment for the overall contract which may be requested by the Owner's Opportunity Programs Group at any given time. Failure to do so may jeopardize the award of future work orders.*

1. Provide a statement of justification to support the request for a waiver of the goal requirements established by the Contract Documents.
2. "Good Faith Effort" Guidelines

The following guidelines must be used for the preparation of ALL "good faith effort" documentation. The responses to the information in the Guidelines should be given in an item-by-item format following the numerical sequence as presented and accompany the Utilization Plan.

IF YOU FAIL TO ADEQUATELY DOCUMENT AND RESPOND TO EACH ITEM ON THE GOOD FAITH EFFORT GUIDELINES, THE REQUEST FOR WAIVER WILL BE DEEMED NON-RESPONSIVE, INCOMPLETE AND WILL BE REJECTED.

If you need assistance, please contact the Opportunity Programs Group at (518) 257-3706 (Upstate) or (212) 273-5038 (Downstate).

GOOD FAITH EFFORT GUIDELINES

1. Attach a copy of the completed Utilization Plan in accordance with M/WBE goals established in the Contract Documents.
2. Submit a written request for a referral list of M/WBE's certified by Empire State Development by trade or service from the Opportunity Programs Group for subcontracting and procurement opportunities.
3. Contact all the Empire State Development certified M/WBEs posted in the list of interested subcontractors and suppliers posted on the DASNY's website:
<http://www.dasny.org/construc/bidops/03C2.php>
4. Provide a record of advertisements placed in general circulation, trade and minority and women oriented publications. Include the name of publications and dates of advertisements.
5. Submit documentation that clearly demonstrates that you contacted all the M/WBEs identified through the outreach activities outlined above to determine their capacity to perform the applicable scope of work.
6. Provide a record of ALL written solicitations made to New York State certified minority and women-owned business enterprises obtained from the directory of certified businesses and/or the outreach efforts specified above. Include dates and copies of solicitation made.
7. Provide a record of ALL responses received from New York State certified minority and women-owned business enterprises to any such advertisements and solicitations made. Include dates and copies of any written responses.
8. Provide a list of any pre-bid, pre-award, or other meetings attended with New York State certified minority or women owned businesses.
9. List the efforts undertaken to subdivide portions of the work into smaller components in order to increase New York State certified minority and women-owned business enterprise participation.
10. Did your firm solicit any New York State certified minority and women-owned business enterprises located outside the region where the scope of work is to be performed? If so, what actions were taken to contact and assess the financial ability of those firms to participate?
11. Provide a description of all relevant contract documents, plans or specifications, or documents describing the scope of work which was made available to New York State certified minority and women-owned business enterprises for the purposes of soliciting their bids. Include the dates and manner in which these documents were made available.
12. Were the same subcontract terms and conditions offered to New York State certified minority and women-owned business enterprises as those offered in the ordinary course of business and to other subcontractors?
13. Did your firm engage in direct in person or telephone negotiations with NYS certified M/WBE firms where quotes originally submitted were deemed as too high?
14. Has your firm made payments for work performed by New York State certified minority and women-owned business enterprises in a timely fashion for past work so as to facilitate continued performance by the certified businesses?
15. List any special considerations and/or concerns, which are preventing adequate New York State certified minority and women-owned business enterprises to participate.

UTILIZATION PLAN

D. PERMANENT EMPLOYEE DISTRIBUTION

PRIME INFORMATION: CONTRACTOR CONSULTANT VENDOR

Name:

Address:

Contact Person:

E-Mail Address:

City:

State:

Zip:

Telephone Number:

Fax Number:

DISTRIBUTION OF PERMANENT EMPLOYEES

<u>ENTER POSITION OR JOB TITLE</u>	FEMALE EMPLOYEES					MALE EMPLOYEES				
	NATIVE					NATIVE				
	WHITE	BLACK	AMERICAN	HISPANIC	ASIAN	WHITE	BLACK	AMERICAN	HISPANIC	ASIAN

EXECUTIVE AND OWNER: For position titles such as President, Partner, Owner, Treasurer, Secretary, etc.

PROFESSIONAL: For position titles of individuals possessing a License to practice their profession

TECHNICAL AND MANAGEMENT: For position titles except Executive and Owner, Professional, and Clerical & Support

CLERICAL AND SUPPORT:

Type Name of Principal or Officer

Type Title of Principal or Officer

Signature of Principal or Officer

Date

UTILIZATION PLAN

E. STANDARD EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

PRIME INFORMATION: CONTRACTOR CONSULTANT VENDOR

Name:

Address:

Contact Person:

E-Mail Address:

City:

State:

Zip:

Telephone Number:

Fax Number:

PROJECT INFORMATION:

Facility Name:

Building (s):

Address:

City:

County:

Zip:

Work Description:

Project Number: _____ **Contract Amount:** \$ _____

The following is a statement of _____'s commitment to provide participation by minority persons and women in the workforce at the above referenced project:

_____ will ensure and maintain a working environment free of harassment, intimidation and coercion and shall specifically ensure that all foremen, superintendents and other supervisory personnel are aware of and carry out our commitment to maintain such a working environment.

_____ will establish and maintain a current list of minority and women recruitment sources and notify such sources and minority and community organizations when employment opportunities are available and maintain a record of the sources and organizations' responses.

_____ will maintain a file of the names and address of each minority person and woman referred to it by any individual, recruitment source or community organization and of what action was taken with respect to each such referred individual. If the individual was not employed, the file will contain the reasons.

_____ will promptly notify the DASNY when the union or unions with which we have a collective bargaining agreement has not referred to us a minority person or woman sent by us to such a union for employment in the work or when it has other information that the union referral process has impeded efforts to meet its obligations.

_____ will disseminate this equal employment opportunity policy statement within the organization and will provide all subcontractors with a copy, discussing it with them prior to commencing work at the job site. A copy of our equal employment policy shall be posted at the job site at all times.

Type Name of Principal or Officer

Type Title of Principal or Officer

Signature of Principal or Officer

Date

F. MWBE COMPLIANCE STATEMENT

The following is a statement of _____'s commitment to comply with DASNY's MWBE program goals and objectives:

- _____ will ensure that MWBE subcontractors and vendors on the project are experienced and qualified to perform the required work.
- _____ will ensure that MWBE subcontractors and vendors on the project perform a commercially useful function.
- _____ will maintain a file of the names, addresses and telephone numbers of each MWBE subcontractor and vendor contacted to perform on the project, the date of contact and their response.
- _____ will not seek credit for the participation of MWBE subcontractors and vendors in excess of the amount allowed by DASNY's MWBE program guidelines.
- _____ will notify and obtain written approval from DASNY for any changes in this Utilization Plan.

Type Name of Principal or Officer

Type Title of Principal or Officer

Signature of Principal or Officer

Date

Subscribed and sworn to before me in the State of _____
County of _____ this ____ day of _____, 20__

Notary Public

ID No.: _____

My Commission Expires: _____

G. DASNY REVIEW AND APPROVAL

DASNY Opportunity Programs Group

DASNY Project Manager

Date

Date

Signature

Signature

Print Name

Print Name



DORMITORY AUTHORITY - STATE OF NEW YORK
Office of Opportunity Programs

UPSTATE: 515 Broadway * Albany, NY 12207-2964 * Phone: (518) 257-3706 Fax: (518) 257-3100

DOWNSTATE: One Penn Plaza, 52nd Floor * New York, NY * 10119-0098 * Phone: (212) 273-5038 Fax: (212) 273-5121

SCOPE VERIFICATION FORM

This form must be submitted with the Utilization Plan for each MWBE subcontractor listed on the Utilization Plan and each Service-Disabled Veteran Owned Business (SDVOB). Failure to submit will delay acceptance of the Utilization Plan and award of the Contract.

A. PROJECT INFORMATION	
Facility:	Project No:
Contract/Bid No:	Work Authorization (if applicable):

B. PRIME CONTRACTOR	C. M/WBE SUBCONTRACTOR	MBE <input type="checkbox"/>	WBE <input type="checkbox"/>
COMPANY:	COMPANY:		
CONTACT:	CONTACT:		
TELEPHONE:	TELEPHONE:		
E-MAIL:	E-MAIL:		

D. SDVOB SUBCONTRACTOR
COMPANY:
CONTACT:
TELEPHONE:
E-MAIL:

E. MWBE SUBCONTRACTOR SCOPE OF SERVICES

In the box below, provide a detailed scope of services to be performed by the proposed M/WBE Subcontractor listed above.

CSI Number (Must be 6 Digits)	DESCRIPTION OF WORK	CONTRACT AMOUNT



DORMITORY AUTHORITY - STATE OF NEW YORK
Office of Opportunity Programs

UPSTATE: 515 Broadway * Albany, NY 12207-2964 * Phone: (518) 257-3706 Fax: (518) 257-3100

DOWNSTATE: One Penn Plaza, 52nd Floor * New York, NY * 10119-0098 * Phone: (212) 273-5038 Fax: (212) 273-5121

F. SDVOB SUBCONTRACTOR SCOPE OF SERVICES

In the box below, provide a detailed scope of services to be performed by the proposed SDVOB Subcontractor listed above.

CSI Number (Must be 6 Digits)	DESCRIPTION OF WORK	CONTRACT AMOUNT

The official schedule of values for the above scope of services must be submitted along with the applicable subcontract agreement within 30 days of contract award. Failure to do so may delay future payment requisitions.

Contractor will notify and obtain written approval from DASNY for any changes in this Scope Verification Form.

Contractor and M/WBE Subcontractor certify that M/WBE Subcontractor will perform the above scope of work and will not subcontract its work, in whole or in part, to a non-M/WBE entity.

Contractor and SDVOB Subcontractor certify that SDVOB Subcontractor will perform the above scope of work and will not subcontract its work, in whole or in part, to a non-SDVOB entity.

CONTRACTOR

M/WBE SUBCONTRACTOR

 Print Name of Principal or Officer

 Print Title of Principal or Officer

 Signature of Principal or Officer

 Signature of Principal or Officer

 Date

 Date



DORMITORY AUTHORITY - STATE OF NEW YORK
Office of Opportunity Programs

UPSTATE: 515 Broadway * Albany, NY 12207-2964 * Phone: (518) 257-3706 Fax: (518) 257-3100

DOWNSTATE: One Penn Plaza, 52nd Floor * New York, NY * 10119-0098 * Phone: (212) 273-5038 Fax: (212) 273-5121

SDVOB SUBCONTRACTOR

Print Name of Principal or Officer

Signature of Principal or Officer

Date

“Appendix A”

DORMITORY AUTHORITY – STATE OF NEW YORK
Monthly/Quarterly WORK FORCE UTILIZATION REPORT

Executive Order No. 162, issued by Governor Andrew Cuomo on January 9, 2017, requires Prime Contractors and included Subcontractors awarded State contracts after June 1, 2017 to submit a completed Monthly Workforce Utilization Report for contracts with a total contract value of One-Hundred Thousand 00/100 Dollars (\$100,000) or more for real property renovations and construction. Contracts for labor, services, equipment, materials or any combination of the foregoing with a total value of Twenty-Five Thousand 00/100 Dollars (\$25,000.00) or more are required to submit a completed Quarterly Workforce Utilization Report. The Prime Contractor is responsible for collecting reports from each of its included Subcontractors performing work on the contract, ensuring that the Subcontractor submits the report as required. Solely for the purposes of this reporting requirement, “Subcontractors” shall include any entity engaged in a contract with a Prime Contractor to provide services directly to or on behalf of the Prime Contractor on a State contract. Solely for the purposes of this reporting requirement, “Subcontractors” shall not include any entity providing exclusively goods and transportation directly to or on behalf of the Prime Contractor on a state contract.

All Monthly/Quarterly Workforce Utilization Reports are to be submitted within 10 days of the end of each month/quarter. Instructions for Submitting the Report and Frequently Asked Questions are posted on the DASNY website at <https://www.dasny.org/tools-forms/forms>, and may be accessed by clicking on MWSBE. The completed reports are to be submitted to DASNY’s Opportunity Programs Group by emailing the Excel workbook files to EO162Reporting@dasny.org. Hard copies of the reports will not be accepted.

If you have any questions or require assistance in completing the Report, please contact Kim Kreski at KKRESKI@DASNY.org, (518) 257-3706 (Upstate projects) or Cher Parker at Cparker@DASNY.org, (212) 273-5038 (Downstate projects).

515 Broadway • Albany, New York 12207-2964

Payment Requisition Date: __/__/____
 Payment Requisition Amount: \$ _____

PRIME CONTRACTOR / CONSULTANT / VENDOR INFORMATION

NAME:	PROJECT#	CONTRACT#	WORK AUTH# (if applicable):
ADDRESS:	FEDERAL ID#	INSTITUTION:	
CITY, STATE ZIP:			
CONTACT PERSON: (person completing form)	TELEPHONE# - - - EMAIL:	WORK DESCRIPTION:	

<input type="checkbox"/> Please check here if you were granted a Total Waiver of the M/WBE Goals by receipt of letter dated: / /	<input type="checkbox"/> Please check here if you are a Professional Service Consultant & the original contract or Term Work Authorization amount is under \$50,000
<input type="checkbox"/> Please check here if you are a Construction Contractor and the original contract amount is under \$100,000.	<input type="checkbox"/> Please check here if you are a Commodity Vendor & the original purchase order/contract amount is under \$25,000.

SUBCONTRACTOR/SUBCONSULTANT and SUPPLIER PAYMENT INFORMATION * ALL M/WBE and SDVOB Firms must be listed.
 * Non-M/WBE Firms with a "Total Value of Subcontract/PO" over \$10,000 must be listed.

<input type="checkbox"/> Please check here if <u>no</u> subcontractors or suppliers are being utilized on this contract	FEDERAL TAX ID NUMBER	CLASSIFICATION (select from both categories)		AMOUNT TO BE PAID OUT OF THE PROCEEDS OF THIS REQUISITION	TOTAL AMOUNT OF ALL PAYMENTS MADE PRIOR TO THIS REQUISITION	TOTAL VALUE OF SUBCONTRACT/PO'S ISSUED
<i>COMPANY INFORMATION</i>						
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$

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PRIME CONTRACTOR / CONSULTANT / VENDOR INFORMATION						
NAME:		PROJECT#	CONTRACT#	WORK AUTH# (if applicable):		
SUBCONTRACTOR/SUBCONSULTANT and SUPPLIER PAYMENT INFORMATION		* ALL M/WBE Firms must be listed. * Non-M/WBE Firms with a "Total Value of Subcontract/PO" over \$10,000 must be listed.				
COMPANY INFORMATION	FEDERAL TAX ID NUMBER	CLASSIFICATION (select from both categories)		AMOUNT TO BE PAID OUT OF THE PROCEEDS OF THIS REQUISITION	TOTAL AMOUNT OF ALL PAYMENTS MADE PRIOR TO THIS REQUISITION	TOTAL VALUE OF SUBCONTRACT/PO'S ISSUED
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$

Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
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PRIME CONTRACTOR / CONSULTANT / VENDOR INFORMATION

NAME:	PROJECT#	CONTRACT#	WORK AUTH# (if applicable):
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SUBCONTRACTOR/SUBCONSULTANT and SUPPLIER PAYMENT INFORMATION * ALL M/WBE Firms must be listed.
 * Non-M/WBE Firms with a "Total Value of Subcontract/PO" over \$10,000 must be listed.

COMPANY INFORMATION	FEDERAL TAX ID NUMBER	CLASSIFICATION <i>(select from both categories)</i>	AMOUNT TO BE PAID OUT OF THE PROCEEDS OF THIS REQUISITION	TOTAL AMOUNT OF ALL PAYMENTS MADE PRIOR TO THIS REQUISITION	TOTAL VALUE OF SUBCONTRACT/PO'S ISSUED	
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$

Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$
Name: Address: Work Description:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Non-M/WBE <input type="checkbox"/> SDVOB	<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier	\$	\$	\$

Compliance Report Instructions

This report is required with the submittal of each payment requisition. Payment will not be processed without a completed report with an original signature.

<p>PRIME CONTRACTOR/CONSULTANT /VENDOR INFORMATION</p>	<p>Please provide all of the Prime and Project information as requested.</p>
<p>SUBCONTRACTOR/SUBCONSULTANT and SUPPLIER PAYMENT INFORMATION</p>	<p>If you are not reporting any sub/supplier payments, please check the appropriate box. All of the M/WBE and SDVOB sub/supplier information requested must be provided. <u>ALL</u> M/WBE and SDVOB Firms must be listed. Non-M/WBE Firms with a “Total Value of Subcontract/PO” over \$10,000 must be listed. ABOVE FIRMS MUST BE REPORTED EVEN IF THEY ARE NOT RECEIVING A PAYMENT THIS MONTH. ** Only firms that have NYS Certification by the Empire State Development Corporation can be counted towards the M/WBE goal achievement for this contract.</p>

*****Please follow the instructions below carefully.***

<p>AMOUNT TO BE PAID OUT OF THE PROCEEDS OF THIS REQUISITION</p>	<p>Indicate the amount TO BE PAID to each sub/supplier from the money you will receive from this requisition. If no payment will be made, enter \$0 <i>*This is not the amount that you “intend” to pay over the life of the contract.</i></p>
<p>TOTAL AMOUNT OF ALL PAYMENTS MADE PRIOR TO THIS REQUISITION</p>	<p>Indicate the amount that has ACTUALLY been paid to date. Note: DO NOT include the amount to be paid out of the proceeds of this requisition. <i>*M/WBE amounts will be verified by DASNY’s Office of Opportunity Programs through the receipt of copies of canceled checks. You may attach (please staple!) check copies to the report for expediency.</i></p>
<p>TOTAL VALUE OF ALL SUBCONTRACT/PO’s ISSUED</p>	<p>Indicate the total value to date of ALL subcontract agreements issued by your company to the subcontractors/suppliers for this contract. This should be inclusive of any change orders issued to the original contract. -or- Indicate the total amount of ALL purchase orders issued by your company to the subcontractors/suppliers for this contract.</p>

COMPLIANCE CERTIFICATION*

_____ hereby certifies that for the current payment period: (i) the information in this report regarding MWBE participation on the contract is true and accurate; (ii) the MWBE subcontractors and vendors listed in this report have performed a commercially useful function on the project and have not, other than as allowed in the approved Utilization Plan, subcontracted their assigned scope of work to a non-MWBE entity; and (iii) it is in compliance with the approved Utilization Plan for the contract.

Type Name of Principal or Officer

Type Title of Principal or Officer

Signature of Principal or Officer

Date

Subscribed and sworn to before me in the State of _____
County of _____ this ____ day of _____, 20__

Notary Public

ID No.: _____

My Commission Expires: _____

**False statements, information or data submitted on or with application for payment, may result in one or more of the following actions: Termination of Contract for cause; disapproval of future bids, contracts, or subcontracts; Withholding of final payments on the contract; and Civil and/or criminal prosecution.*

DASNY REVIEW

DASNY's review of this report does not relieve the Contractor of its obligation to provide a true and accurate report and strictly comply with its approved Utilization Plan and Article 20 of the Contract General Conditions

DASNY Project Manager

Date

Signature

Print Name

Instructions for New York State Vendor Responsibility Questionnaires

Although it is recommended that vendors complete their questionnaires online using the New York State VendRep System, the four (4) questionnaires found on the VendRep System are also available in paper format.

The questionnaires are intended to elicit information based on vendor type (For-Profit or Not-for-Profit) and activity (Construction or Non-Construction). Each vendor should select the questionnaire that most closely reflects its business characteristics or as directed by an agency's solicitation instructions. The available vendor questionnaires are:

- For-Profit
- For-Profit Construction
- Not-for-Profit
- Not-for-Profit Construction

Business Entities may print the PDF version of a questionnaire form and complete it manually or may select the MS Word version and complete the questionnaire on a computer. Completing the questionnaire in MS Word allows the questionnaire to be saved on the user's computer and updated in the event that the vendor's information changes.

The person(s) completing the vendor responsibility questionnaire must be knowledgeable about the vendor's business and operations. The certification at the end of each questionnaire must be completed by an owner or officer of the Business Entity and must be notarized to be complete.

Business Entities must answer every question contained in the selected questionnaire.¹ Most questions require "Yes" or "No" answers and request additional information where necessary. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. For paper submissions, responses that require additional information must include an attachment containing this information.

If the submitting Business Entity is a Joint Venture, one questionnaire must be submitted for the Joint Venture plus each Business Entity comprising the Joint Venture must also submit separate questionnaires.

¹ If the Business Entity uses a Social Security Number (SSN) as its identification number, providing the SSN on the questionnaire is optional. Individuals and Sole Proprietors may use an SSN but are encouraged to obtain and use an Employer Identification Number.

New York State Vendor Responsibility

Definitions List

Administrative Proceeding

Any government entity proceeding in which a determination of the legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity to be heard. Such a proceeding may be solely comprised of an exchange of written materials, which can include, but is not limited to, testimony recorded electronically, transcriptions, letters, documents, etc.

Affiliate

For-Profit:

SEE ASSOCIATED ENTITY

Not-For-Profit:

Any business entity (not-for-profit or for-profit) which is entitled to exercise the membership rights of participation in the election of board members, participation and service on the committees of the not-for-profit and approval of changes to a business entity's governing documents, and any company or other legal entity which controls or is controlled by the not-for-profit business entity.

Construction:

- a. Any business entity in which the submitting Business Entity holds 5% or greater ownership interest; and/or
- b. Any business entity or organized group of principal owners or officers holding 5% or greater ownership interest of the submitting business entity; and/or
- c. Any business entity which is owned
 - i. 5% or more by the same entity or group described in (b) or
 - ii. by an individual holding 5% or greater ownership in the submitting business entity and/or
- d. Any business entity in which the submitting Business Entity directs or has a right to direct such entity's daily operations, regardless of percentage of ownership interest.

Associated Entity

Generally, any entity that the Reporting Entity controls or is controlled by, including:

- a. Owner: Any business entity or organized group of principal owners or officers holding 50% or greater ownership interest in the Reporting Entity (i.e., holding company, parent company).
- b. Controlling entity: Any business entity which directs or has a right to direct the Reporting Entity's operations, regardless of percentage of ownership interest (i.e., headquarters).
- c. Controlled entity: Any business entity in which the Reporting Entity holds 50% or greater ownership interest, or the Reporting Entity directs or has a right to direct operations, regardless of percentage of ownership interest (i.e., subsidiaries, units under the Reporting Entity).

Note: "Associated Entity" does not include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

Business Entity

Includes a Legal Business Entity, a Reporting Entity or an Associated Entity as defined herein.

New York State Vendor Responsibility

Business Entity Leaders

An officer, general partner, managing partner, manager of an LLC, and/or director.

Business Entity Officials

Individuals serving in an executive capacity, as staff and/or corporate officers, who have decision-making authority and responsibility for the oversight of a business entity; includes individuals who perform the functions of chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board, or their equivalents. (Equivalent titles may include, but are not limited to, President, Executive Vice President, Treasurer, Secretary, Managing Trustee)

Instructions:

Corporations: Identify the Business Entity Officials.

Partnerships: Identify the Senior Managing Partners, and any other partners with powers equivalent to Business Entity Officials.

Limited Liability Companies (LLC): Identify the Executive Managing Directors/Members, Senior Managing Directors/Members, and any other members/managers with powers equivalent to Business Entity Officials.

Sole Proprietors: Identify the individual who is the sole owner and manager of the business entity, or other persons, including staff, with powers equivalent to Business Entity Officials.

Unincorporated Associations: Identify the Executive Committee Members, including President, Vice President, Secretary and Treasurer, Executive or Managing Trustees, or other persons, including staff, with powers equivalent to Business Entity Officials.

Certificate of Good Standing

Certificate issued by the Business Entity's controlling jurisdiction indicating that the Business Entity is current with the filing requirements of the jurisdiction, issued within one year of the date of certification of the Vendor Responsibility Questionnaire.

Charities Registration Number

Number issued by the New York State Attorney General's Charities Bureau to qualified not-for-profit charitable organizations.

CIK Code

The Central Index Key (CIK) is a designation number established for each entity which has filed disclosures with the Securities and Exchange Commission (SEC). It is used on the SEC's computer systems to identify corporations and individual people who have filed disclosure with the SEC.

Citation, Summons, Notice, Violation Order

A notice to appear in court or at an administrative hearing or administrative proceeding, usually issued by a State or Local Government enforcement agency. Includes court issued writs, police issued orders, administrative orders or writs to appear at a certain time and place to do something demanded in the writ, or to defend against the citation, or to show cause for not doing so.

New York State Vendor Responsibility

Claim

A written, formal demand for money due, for property, for damages or for enforcement of a right, e.g., a fine or penalty sought by a Government Entity.

Construction

Contracts for work involving general contracting, building new structures and remodeling existing structures, demolition, concrete, paving and masonry, excavation, heating, ventilation and air conditioning, painting, plumbing, electrical work, roofing, asbestos abatement, lead abatement, and remediation and abatement of hazardous materials or hazardous waste. Construction activity also includes grant and other activities in which a not-for-profit entity contracts with the State for construction services (e.g., the building of permanent and transitional housing, and day care facilities). Includes all construction activities whether provided directly or through the use of subcontractors.

Corporation – For-Profit

Entity organized for the purpose of making profit, created under the laws of a State or United States federal government. Ownership may consist of publicly traded or privately held shares of stock.

Corporation – Not-For-Profit

A corporation formed for purposes other than financial gain, pursuant to and in accordance with a state's Not-For-Profit Corporation Law.

DBA - Doing Business As

An assumed name a business entity uses for doing business, in lieu of using the legal business name or owner's personal name. The entity must have filed a "Business Certificate," otherwise known as a Certificate of Conducting Business Under an Assumed Name, or DBA, in the county clerk's office of the county in which the business entity is located, or in the case of corporate entities with the Department of State.

Debarred

The exclusion of an individual or business entity from participating in the government procurement process for specified period of time.

Disadvantaged Business Enterprise (DBE)

A United States federal designation through a program run by the U.S. Department of Transportation. A for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51% of the stock is owned by one or more such individuals. State Agencies designate a business entity as a DBE based upon the federal standards.

Disqualification

Any action taken by a government entity which prevents or precludes a business entity from receiving an award for a particular contract or from being placed on a prequalification list. A business entity may be disqualified for a number of reasons, including but not limited to determinations of non-responsibility or lack of required experience.

New York State Vendor Responsibility

DUNS - Data Universal Numbering System

A unique 9-digit number provided by Dun & Bradstreet (D&B), a commercial information company. The DUNS Number is site-specific and division-specific. Therefore, each physical location of an entity may have its own DUNS Number. Further, each separate division or branch of an entity may have its own, unique DUNS Number.

EIN - Employer Identification Number

Federal Employer Identification Number used for federal income tax reporting. Although this number may be the Social Security Number of an individual operating a business as a sole proprietor, vendors are encouraged to obtain an EIN for business purposes.

Federal

Any department, division, board, commission or bureau of any federal department designated by the United States federal government.

Financial Statements

Presentation of financial data including balance sheets, income statements, and statements of cash flow, or any supporting statement(s) intended to communicate a business entity's financial position at a point in time and its results of operations for a period then ended.

Formal Unsatisfactory Performance Assessment

A written (including electronic), unsatisfactory performance assessment or evaluation issued by a government entity, after providing due process to a business entity. May include unsatisfactory past performance assessments determined under audit and/or required by law, rule, regulation, policy or procedure.

Former Name

Any previous name by which Legal Business Entity has done business as, inside or outside the State of New York.

General Partnership

An association of two or more persons to carry on as co-owners of a business.

New York State Vendor Responsibility

Good Faith Effort(s)

An effort to achieve a Minority-Owned Business Enterprise, Women-Owned Business Enterprise (M/WBE) or Disadvantaged Business Enterprise (DBE) goal, federal requirement or New York State requirement, which, by its scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

The code of Federal Regulations 49 C.F.R. Part 26 sets forth the standards to determine whether a contractor has made good faith efforts to reach a DBE goal. Appendix A to Part 26 provides the following guidance for a bidder: "First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful."

Article 15-A of the Executive Law of the State of New York sets forth the standards for the M/WBE Program. These standards are to be used to determine whether a contractor has made "active and conscientious efforts to employ and to utilize minority group members and women at all levels and in all segments of its work force on state contracts, and the contractor will document these efforts."

Government Audits

Financial, compliance and/or performance audits completed for or by a government entity.

Government Contract

A contract entered into by a United States federal, state or local government entity.

Government Contracting Process

Bidding, evaluation, award and administration of a government contract.

Government Entity

Any United States federal, state or local government-created bureau, agency, department, division, board, commission, public authority or public benefit corporation.

Investigation

An inquiry has been or is being made by any prosecutorial, investigative or regulatory agency concerning an individual or business entity or the activities and/or the business practices thereof.

Joint Venture

When two or more persons or business entities join together for a specific business undertaking in which profits, losses and control are shared. Usually an enterprise with limited scope and duration but with shared liability and responsibility for debts or losses. Joint ventures normally terminate when the contract or project for which the entities have joined is completed. The Joint Venture may be established as a separate legal entity with its own federal Employer Identification Number (EIN).

New York State Vendor Responsibility

Judgment

A court decision or judgment that settles the rights of the parties and disposes of all issues in controversy, except for award of costs and enforcement of the judgment. A judgment rendered by a lower court is deemed to be a final judgment, even if such judgment is subject to appeal.

Key Employee

Any officer, managing director or managing trustee, executive director, and persons or entities that manage and/or control the daily operations of the Business Entity, and any person having responsibilities or powers similar to those of officers, managing directors, or managing trustees, including the chief management and administrative officials of the Business Entity (such as executive director or chancellor), but does not include the heads of separate departments or smaller units within the business entity.

A chief financial officer and the officer in charge of administration or program operations are both Key Employees if they have the authority to control the Business Entity's activities, its finances or both. The "heads of separate departments" reference applies to persons such as the head of the radiology department or coronary care unit of a hospital, or the head of the English department at a college. These persons are managers within their specific areas but not for the business entity as a whole and therefore, are not Key Employees.

Legal Business Entity

A Business Entity registered with the Internal Revenue Service and assigned a federal Employer Identification Number. (Note: Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use an Employer Identification Number.)

Legal Business Entity includes for-profit and not-for-profit entities, and may take the form of:

- a. a Corporation, Partnership (including General, Limited or Limited Liability Partnership), Limited Liability Company, Sole Proprietor, Unincorporated Association, or any other business organization, in the case of for-profit entities, or
- b. a Not-for-Profit Corporation, Foundation, Partnership, Limited Liability Company, Unincorporated Association, or any other business organization, in the case of not-for-profit entities.

Legal Business Entity Name

The name of the entity as set forth in the Legal Business Entity's creation documents.

- a. For Corporations, the name as set forth in the Certificate of Incorporation.
- b. For General Partnerships, the name as set forth in the Certificate of Assumed Name.
- c. For Limited Partnerships, the name as set forth in the Certificate of Limited Partnership.
- d. For Limited Liability Partnerships, the name as set forth in the Certificate of Registration.
- e. For Limited Liability Companies, the name as set forth in the Articles of Organization.

For purposes of this questionnaire, a Sole Proprietor or an individual seeking to do business as him/herself may use his/her name anywhere it asks for the name of the Legal Business Entity Name.

New York State Vendor Responsibility

Liens

A form of security interest against property or property interest to secure the payment of a debt, judgment, or taxes, including, but not limited to, judgment liens, mechanics' liens, tax liens, attorneys' liens, New York State of Department of Environmental Conservation liens, but shall not include purchase credit liens, Uniform Commercial Code filings, or mortgages.

Liquidated Damages

Compensation that contracting parties have agreed should be paid to one party for any loss or damage arising from breach of the agreement by the other party.

LLC - Limited Liability Company

A Limited Liability Company (LLC) is a type of business structure that offers limited liability for the debts and obligations of the business entity to the owners. An LLC provides management flexibility and the income and losses are passed through the owners of the entity, like a partnership. It must be formed pursuant to and in accordance with the Limited Liability laws of the state. The designation "LLC" must follow and be a part of the business entity's legal name.

LLP - Limited Liability Partnership

A Limited Liability Partnership is a partnership with no limited partners, where each partner is a professional by law and qualified to render a professional service, and is engaged in the practice of such profession. The business entity is registered as an LLP with the New York State Department of State, or a partnership with no limited partners registered or otherwise created under the laws of another jurisdiction. The designation "LLP" must follow and be a part of the business entity's legal name.

LP - Limited Partnership

A Limited Partnership is a type of partnership which has two types of partners; general and limited. A LP has at least one general partner and one or more limited partners. The general partner acts in the same capacity as in a general partnership such as management control, right to use property of the partnership, shared profits and joint/several liability. The limited partner has limited liability, is not involved in the day-to-day activity of the partnership and has no management control. The designation "LP" must follow and be a part of the business entity's legal name.

Material Disallowance

Expenditures which have occurred in a contract or grant which an auditor has determined were not allowed under the guidelines established by the agency, the terms of the contract or grant, or by statute, in an amount that would be material in relation to the total value of the contract or grant.

Minority Community-Based Organization (MCBO)

A not-for-profit, local human service organization having its origins in the geographic area that it serves. Generally, the governing bodies and personnel of community-based organizations reflect the racial, ethnic and cultural makeup of the community being served. These types of organizations are characterized by majority representation of Native Americans, Asian-Americans, African-Americans and/or Hispanic-Americans, in both policy formulation and decision-making regarding management, service delivery and staffing reflective of the geographic area it serves.

New York State Vendor Responsibility

Minority-Owned Business Enterprise (MBE)

A business enterprise which is at least 51% owned, operated or controlled by United States citizens or permanent resident aliens who are minority group members (as listed under Article 15-A of the New York State Executive Law).

A business entity must be certified by the New York State Division of Minority and Women-Owned Business Development as a Minority-Owned Business Enterprise in order to qualify for this status.

New York State Small Business (SB)

A business which is a resident of New York State, independently owned and operated, not dominant in its field and which employs one hundred or fewer people.

New York State Vendor ID

The NYS Vendor ID is a ten-character identifier issued by New York State when the vendor is registered on the Vendor File.

Non-Responsibility Finding

A determination by a government entity that a business entity does not have the requisite financial or organizational capacity, and/or legal authority, and/or integrity, and/or acceptable performance on previous government contracts to perform on a government contract.

Not-For-Profit

A business entity organized for the purpose of social, religious, charitable, educational, athletic, literary, and political or other such activities, which is registered with either:

- a. the New York State Department of State as a Not-for-Profit Corporation in accordance with Article 13 of the Not-for-Profit Corporation Law; and/or
- b. the New York State Attorney General Charities Bureau;

or, is exempt from taxation under Section 501 of the Internal Revenue Code.

Not-For-Profit Corporation

A corporation formed for purposes other than financial gain, pursuant to and in accordance with a state's Not-For-Profit Corporation Law.

New York State Vendor Responsibility

Official(s)

Individual who serves in an executive capacity with decision-making authority and responsibility for the oversight of a Legal Business Entity, a Reporting Entity or an Associated Entity; includes individuals who perform the functions of chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board, or their equivalents.

Equivalent titles may include, but are not limited to the following:

- a. Corporations: The chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), and/or chairman of the board
- b. Partnerships: The Senior Managing Partners
- c. Limited Liability Companies (LLC): The Executive Managing Directors/Members, Senior Managing Directors/Members
- d. Sole Proprietors: The individual who is the sole owner and manager of the business entity
- e. Unincorporated Associations: The Executive Committee Members, including President, Vice President, Secretary and Treasurer, Executive or Managing Trustees

Organizational Chart

A diagram which illustrates the relationship and management structure of the Reporting Entity to the Legal Business Entity and other Associated Entities as herein defined

Organizational Unit

An established portion of a Legal Business Entity which is within and operating under the authority of the Legal Business Entity, with a designated manager or management team responsible for the operation thereof. For example, a department, division, branch or chapter directly or primarily responsible for fulfilling the terms of the contract. (See Reporting Entity)

OSHA Violation

Serious

A violation designated as "serious" by the Occupational Safety and Health Administration (OSHA). Generally, where there is substantial probability that death or serious physical harm could result and that the employer knew or should have known of the hazard.

Willful

A violation designated as "willful" by the Occupational Safety and Health Administration (OSHA). Generally, a violation that the employer knowingly commits or commits with plain indifference to the law. The employer either knows that what he or she is doing constitutes a violation, or is aware that a hazardous condition exists and makes no reasonable effort to eliminate it.

PC – Professional Service Corporation

A Professional Service Corporation (PC) is organized by one or more individuals authorized to provide a professional service for the purpose of making a profit and for the purpose of rendering such professional service as licensed thereto. Shares may only be issued to those licensed individuals as are authorized to practice their professional service in this state and who have engaged in such profession or will be engaged in the practice of such profession of the PC within 30 days of the issuance of the shares. The designation "PC" must follow and be a part of the business entity's legal name.

New York State Vendor Responsibility

PLLC – Professional Service Limited Liability Company

A Professional Service Limited Liability Company (PLLC) is a limited liability company organized for the purpose of providing professional services. Members may only consist of those licensed individuals as are authorized to practice their professional service in this state, and who have engaged in such profession, or will be engaged in the practice of such profession. The designation "PLLC" must follow and be a part of the business entity's legal name.

Primary Place of Business

The location where the direction and management of the Reporting Entity takes place.

Principal Owner

Any person holding 10% or more of the voting stock of a publicly traded corporation, or 25% or more of a privately held corporation. For construction business entities, any person whose ownership interest is 5% or more.

Principal Place of Business

The location of the primary control, direction and management of the Legal Business Entity.

Registered to do business in New York State

A business entity is registered to do business in New York State, when it has met the statutory filing requirements of filing for authority to do business in New York State, usually by filing with the New York Department of State.

Reporting Entity

The Reporting Entity may be either the entire Legal Business Entity or a portion of the Legal Business Entity, which does or anticipates doing business with the State of New York. If it is not the entire Legal Business Entity, the portion must be an established organizational unit within and operating under the authority of the Legal Business Entity, with a designated manager or management team responsible for the operation thereof. The established organizational unit must have the same Employer Identification Number as the Legal Business Entity. The organizational unit must also be part of the Legal Business Entity, with primary responsibility for fulfilling the terms of the anticipated contract. Examples of a Reporting Entity include, but are not limited to, a department, division or branch.

Sanction

(Sanction or sanctioned) Any fine, penalty, judgment, injunction, violation, debarment, suspension or revocation.

Shared Space

Space is considered to be shared when any part of the space utilized by the submitting Business Entity, at any of its sites, is also utilized on a regular or intermittent basis for any purpose by any other entity, and where there is no lease or sublease in effect between the submitting Business Entity and any other entity that is sharing space with the submitting Business Entity.

Sole Proprietor

A business entity owned and operated by one individual, although there may be employees. All business decisions are made by the sole owner.

New York State Vendor Responsibility

State Contracting Entity

Any New York State government-created entity with the authority to enter into a contract. This includes any New York State created agency, department, division, board, commission or bureau, including public authorities and public benefit corporations.

State Government Entity

Any state government-created agency, department, division, board, commission or bureau of any state, including public authorities and public corporations.

Statutory Affirmative Action Requirements

The statutory inclusion of language in government procurement contracts that

- a. requires a business entity to affirmatively act to ensure and promote equal opportunity employment on government contracts,
- b. prohibits a business-entity from discrimination in employment, and
- c. provides for termination of such contracts for a business entity's failure to comply with such terms.

Suspension

(Suspension or suspended) Action taken by a government entity to temporarily restrict the business entity's right to provide new or continuing contractual obligations.

Terminated for Cause

The exercise of a government entity's right to completely or partially terminate a contract due to the business entity's failure to perform its contractual obligations or for the business entity's failure to comply with statutory and/or regulatory responsibilities.

TIN – Taxpayer Identification Number

Taxpayer Identification Number used for federal income tax reporting. This number may be the federal Employer Identification Number (EIN) or the Social Security Number (SSN) of an individual operating a business as a sole proprietor. (Note: Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use an Employer Identification Number.)

Trade Name

Any name used by a person to identify a business or vocation of such person. A person shall include an individual (natural person), firm, partnership, corporation, union, association or other business entity capable of suing and being sued in a court of law. This also includes any trade, franchise or licensee names.

Unincorporated Association

This is a type of business entity that may be created contractually. The contractual relationship is between the members of the association, all of whom have agreed to join together for a particular purpose. These types of business entities include, but are not limited to, unions, historical societies, professional membership associations, and recreational societies.

New York State Vendor Responsibility

Women-Owned Business Enterprise (WBE)

A business enterprise which is at least 51% owned, operated or controlled by U.S. citizens or permanent resident aliens who are women. A business entity must be certified by the New York State Division of Minority and Women-Owned Business Development as a Women-Owned Business Enterprise in order to qualify for this status.

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

You have selected the For-Profit Construction questionnaire, commonly known as the “CCA-2,” which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at ciohelpdesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

BUSINESS ENTITY INFORMATION				
<u>Legal Business Name</u>		<u>EIN</u> _____		
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>		
		Telephone ext.	Fax	
		Website		
Authorized Contact for this Questionnaire				
Name		Telephone ext.	Fax	
Title		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS				
1.0 <u>Business Entity</u> Type – Check appropriate box and provide additional information:				
a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation			
b) <input type="checkbox"/> <u>Limited Liability Company</u> (<u>LLC</u> or <u>PLLC</u>)	Date Organized			
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration			
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established			
e) <input type="checkbox"/> <u>General Partnership</u>	Date Established	County (if formed in NYS)		
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?			
g) <input type="checkbox"/> Other	Date Established			
If Other, explain:				
1.1 Was the <u>Business Entity</u> formed in New York State?				<input type="checkbox"/> Yes <input type="checkbox"/> No
If “No,” indicate jurisdiction where the <u>Business Entity</u> was formed:				
<input type="checkbox"/> United States	State			
<input type="checkbox"/> Other	Country			

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

I. BUSINESS CHARACTERISTICS			
1.2 Is the <u>Legal Business Entity</u> publicly traded?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:			
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>			
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .	<input type="checkbox"/> Yes <input type="checkbox"/> No		
1.5 If the <u>Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> maintain an office in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>			
If "Yes," provide the address and telephone number for one office located in New York State.			
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," check all that apply:			
<input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE)			
<input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE)			
<input type="checkbox"/> <u>New York State Small Business</u>			
<input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)			
1.7 Identify each person or business entity that is, or has been within the past five (5) years, <u>Principal Owner</u> of 5.0% or more of the firm's shares; a <u>Business Entity Official</u> ; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i>			
<u>Joint Ventures</u> : Provide information for all firms involved.			
Name <i>(For each person, include middle initial)</i>	Title	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to question 2.0 above? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable <i>(enter N/A, if not applicable)</i> :		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with this affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction</u> -related <u>Joint Ventures</u> within the past three (3) years? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

III. CONTRACT HISTORY

3.0 Has the Business Entity completed any construction contracts? Yes No

If "Yes," list the ten most recent construction contracts the Business Entity has completed using Attachment A – Completed Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc.

If less than ten, include most recent subcontracts on projects up to that number.

3.1 Does the Business Entity currently have uncompleted construction contracts? Yes No

If "Yes," list all current uncompleted construction contracts by using Attachment B – Uncompleted Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc.

Note: Ongoing projects must be included.

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement? Yes No

4.1 Been subject to a denial or revocation of a government prequalification? Yes No

4.2 Had any bid rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? Yes No

4.3 Had a proposed subcontract rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? Yes No

4.4 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract? Yes No

4.5 Agreed to a voluntary exclusion from bidding/contracting with a government entity? Yes No

4.6 Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes No

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

5.0 Defaulted on or been suspended, cancelled or terminated for cause on any contract? Yes No

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any government contract? Yes No

5.2 Entered into a formal monitoring agreement, consent decree or stipulation settlement as specified by, or agreed to with, any government entity? Yes No

5.3 Had its surety called upon to complete any contract whether government or private sector? Yes No

5.4 Forfeited all or part of a standby letter of credit in connection with any government contract? Yes No

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

- | | |
|--|--|
| 6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

- | | |
|--|--|
| 7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of:
(i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or
(ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No

<input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Had a New York State Labor Law violation deemed willful? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

<p>7.6 Other than previously disclosed, been the subject of any <u>citations</u>, notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of:</p> <ul style="list-style-type: none"> • <u>Federal</u>, state or local health laws, rules or regulations; • <u>Federal</u>, state or local environmental laws, rules or regulations; • Unemployment insurance or workers compensation coverage or <u>claim</u> requirements; • Any labor law or regulation, which was deemed willful; • Employee Retirement Income Security Act (ERISA); • <u>Federal</u>, state or local human rights laws; • <u>Federal</u>, state or local security laws? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.

VIII. LEADERSHIP INTEGRITY

If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.

Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:

<p>8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.1 <u>Suspended, debarred or disqualified</u> from any <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.2 The subject of a criminal <u>investigation</u>, whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:</p> <p style="padding-left: 20px;">(i.) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or</p> <p style="padding-left: 20px;">(ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY		
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</i>		
9.4 What is the <u>Business Entity's</u> Bonding Capacity?		
a. Single Project		b. Aggregate (All Projects)
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:		
1st Year (Indicate year) Gross Sales	2nd Year (Indicate year) Gross Sales	3rd Year (Indicate year) Gross Sales
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)		
1st Year (Indicate year) Amount	2nd Year (Indicate year) Amount	3rd Year (Indicate year) Amount
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls . (This information must be attached.)		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

X. FREEDOM OF INFORMATION LAW (FOIL)

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).
Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.

Yes No

If "Yes," indicate the question number(s) and explain the basis for the claim.

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20__;

_____ Notary Public

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:						
1.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
2.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
3.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
4.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
5.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:						
6.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
7.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
8.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
9.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
10.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:								
1.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
2.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
3.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
4.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:								
5.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
6.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
7.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
8.	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:							
9.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
10.	Agency/Owner					Award Date	Completion Date
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
Grand Total All Uncompleted Contracts						\$0.00	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

As of Date: _____

ASSETS

Current Assets

1. Cash		\$	-	
2. Accounts receivable - less allowance for doubtful accounts	\$	-		
Retainers included in accounts receivable	\$	-		
Claims included in accounts receivable not yet approved or in litigation	\$	-		
Total Accounts Receivable		\$	-	
3. Notes receivable - due within one year		\$	-	
4. Inventory - materials		\$	-	
5. Contract costs in excess of billings on uncompleted contracts		\$	-	
6. Accrued income receivable				
Interest	\$	-		
Other (list) _____	\$	-		
_____	\$	-		
Total Accrued Income Receivable		\$	-	
7. Deposits				
Bid and Plan _____	\$	-		
Other (list) _____	\$	-		
_____	\$	-		
Total Deposits		\$	-	
8. Prepaid Expenses				
Income Taxes	\$	-		
Insurance	\$	-		
Other (list) _____	\$	-		
_____	\$	-		
Total Prepaid Expenses		\$	-	
9. Other Current Assets				
Other (list) _____	\$	-		
_____	\$	-		
Total Other Current Assets		\$	-	
10. Total Current Assets				\$
11. Investments				
Listed securities-present market value	\$	-		
Unlisted securities-present value	\$	-		
Total Investments				\$

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

12. Fixed Assets

Land	\$	-	
			<hr/>
Building and improvements	\$	-	
			<hr/>
Leasehold improvements	\$	-	
			<hr/>
Machinery and equipment	\$	-	
			<hr/>
Automotive equipment	\$	-	
			<hr/>
Office furniture and fixtures	\$	-	
			<hr/>
Other (list) _____	\$	-	
			<hr/>
	\$	-	
			<hr/>
Total			\$ <hr/> -
Less: Accumulated depreciation			\$ <hr/> -
Total Fixed Assets - Net			\$ <hr/> -

13. Other Assets

Loans receivable			
Officers	\$	-	
			<hr/>
Employees	\$	-	
			<hr/>
Shareholders	\$	-	
			<hr/>
Cash surrender value of officers' life insurance	\$	-	
			<hr/>
Organization expense – net of amortization	\$	-	
			<hr/>
Notes receivable - due after one year	\$	-	
			<hr/>
Other (list) _____	\$	-	
			<hr/>
	\$	-	
			<hr/>
Total Other Assets			\$ <hr/> -

14. TOTAL ASSETS

\$

 -

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

LIABILITIES

Current Liabilities

15. Accounts payable		\$ -
16 a. Loans from shareholders - due within one year		\$ -
16 b. Other Loans - due within one year		\$ -
17. Notes payable - due within one year		\$ -
18. Mortgage payable - due within one year		\$ -
19. Other payables - due within one year		
Other (list) _____	\$ -	
_____	\$ -	
Total Other Payables - due within one year		\$ -
20. Billings in excess of costs and estimated earnings		\$ -
21. Accrued expenses payable		
Salaries and wages	\$ -	
Payroll taxes	\$ -	
Employees' benefits	\$ -	
Insurance	\$ -	
Other	\$ -	
Total Accrued Expenses Payable		\$ -
22. Dividends payable		\$ -
23. Income taxes payable		
State	\$ -	
Federal	\$ -	
Other	\$ -	
Total Income Taxes Payable		\$ -
24. Total current liabilities		\$ -
25. Deferred income taxes payable		
State	\$ -	
Federal	\$ -	
Other	\$ -	
Total Deferred Income Taxes		\$ -
26. Long Term Liabilities		
Loans from shareholders - due after one year	\$ -	
Other Loans - due within one year		
Principle	\$ -	
Interest	\$ -	
Notes payable - due after one year	\$ -	
Mortgage - due after one year	\$ -	
Other payables - due after one year	\$ -	
Other (list) _____	\$ -	
_____	\$ -	
Total Long Term Liabilities		\$ -

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

27. Other Liabilities

Other (list) _____ \$ _____
 _____ \$ _____

Total Other Liabilities \$ _____

28. TOTAL LIABILITIES \$ _____

NET WORTH

29. Net Worth (if proprietorship or partnership) \$ _____

30. Stockholders' Equity

Common stock issued and outstanding \$ _____
 Preferred stock issued and outstanding \$ _____
 Retained earnings \$ _____
 Total \$ _____
 Less: Treasury stock \$ _____

31. TOTAL STOCKHOLDERS' EQUITY \$ _____

32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY \$ _____



FOR DEMO PURPOSES ONLY CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Your Agent or Broker	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A:	Your Insurance Company
INSURED Your Name	INSURER B:	Your Insurance Company
	INSURER C:	Your Insurance Company
	INSURER D:	Your Insurance Company
	INSURER E:	Your Insurance Company
	INSURER F:	Your Insurance Company

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			XYZ-123	MM/DD/YY	MM/DD/YY	EACH OCCURRENCE \$ 2,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000	
	<input checked="" type="checkbox"/> Include Independent Contractors						PERSONAL & ADV INJURY \$ 2,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GENERAL AGGREGATE \$ 2,000,000							
							PRODUCTS - COMP/OP AGG \$ 2,000,000	
B	AUTOMOBILE LIABILITY			ABC-345	MM/DD/YY	MM/DD/YY	COMBINED SINGLE LIMIT (Ea accident) \$ \$1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$	
	<input checked="" type="checkbox"/> ALL OWNED AUTOS						<input checked="" type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						<input checked="" type="checkbox"/> NON-OWNED AUTOS	PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/>					\$			
C	<input checked="" type="checkbox"/> UMBRELLA LIAB	Y		LLL-555	MM/DD/YY	MM/DD/YY	EACH OCCURRENCE \$ As Needed	
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE \$	
	<input type="checkbox"/> OCCUR CLAIMS-MADE						\$	
	DED	RETENTION \$						
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WCB-678	MM/DD/YY	MM/DD/YY	WC STATUTORY LIMITS	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y / N	N / A				E.L. EACH ACCIDENT \$	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000	
E	Builder's Risk - REQ. FOR: GOSR, OMH, OPWDD, OASAS, NYCHA			MCK-777	MM/DD/YY	MM/DD/YY	WORK ORDER Value	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

DASNY Contract No: 1000509999 CR ____
 Project Name: JOB ORDER CONTRACTING - REGION ____

The following are Additional Insureds as respect to this project: the Dormitory Authority-State of New York; the State of New York; ALL ENTITIES LISTED ON APPENDIX E. Proof of 30 Days Notice of Cancellation in favor of the Dormitory Authority of the State of New York is required for all insurance policies FOR NYCHA: NYCHA must also receive 30 Days Notice of Cancellation

CERTIFICATE HOLDER**CANCELLATION**

Dormitory Authority- State of New York
 Attn: Risk Management
 515 Broadway
 Albany, New York 12207

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
 Your Agent/Broker Representative



DASNY

ALFONSO L. CARNEY, JR.
Chair

Contract Requirements for Additionally Insured

City University of New York (CUNY) - Certificates should name the City University of New York, the City University Construction Fund, the Construction Manager and the Dormitory Authority of the State of New York as additional insureds.

New York State Department of Health (DOH) - Certificates should name the New York State Department of Health, the State of New York, the Construction Manager and the Dormitory Authority of the State of New York as additional insureds.

New York State Department of Mental Hygiene: Office of Mental Health (OMH), Office for People with Developmental Disabilities (OPWDD) and Office of Alcoholism and Substance Abuse Services (OASAS) - Certificates should name the State of New York, the Construction Manager (when applicable) and the Dormitory Authority of the State of New York as additional insureds.

Office of Court Administration (OCA) - Certificates should name the State of New York, The Unified Court System of New York, the City of Albany, the Construction Manager and the Dormitory Authority of the State of New York as additional insureds.

State University of New York (SUNY) - Certificates should name the State University of New York, the State of New York and the Dormitory Authority of the State of New York as additional insureds.

Housing Trust Fund Corporation (HTFC) - Certificates should name the Housing Trust Fund Corporation (HTFC), the Governor's Office of Storm Recovery (GOSR), the project specific municipality (village and/or town), the State of New York, the Construction Manager (if applicable), and the Dormitory Authority of the State of New York as additional insureds.

New York City Housing Authority (NYCHA) - Certificates should name the State of New York, the New York City Housing Authority (NYCHA), the New York State Division of Housing and Community Renewal (DHCR), and, the Construction Manager (if applicable), and the Dormitory Authority of the State of New York (DASNY) as additionally insured.

New York State Department of Environmental Conservation (NYSDEC) - Certificates should name the New York State Department of Conservation (NYSDEC), the State of New York, the Construction Manager (if applicable), and the Dormitory Authority of the State of New York as additional insureds.



NEW YORK
STATE OF
OPPORTUNITY™

DASNY

Job Order Contract (JOC) No. -----

Region No. -- : ----- Counties

CR --- ----- Services

**CORPORATE
HEADQUARTERS**

515 Broadway
Albany, New York
12207-2964

T 518.257.3000
F 518.257.3100

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One Penn Plaza, 52nd
Fl.
New York, New York
10119-0098

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BUFFALO OFFICE

539 Franklin
Street
Buffalo, New York
14202-1109

T 716.884.9780
F 716.884.9787

www.dasny.org

Agreement

Job Order Contract No. -----
Region No. -- -- -----

This Agreement made as of the -- day of ---- 20--, by and between the DASNY, a public benefit corporation and public authority established by the Public Authorities Law of the State of New York, hereinafter referred to as the "OWNER" and -----, a business corporation organized and existing under the laws of the State of New York, hereinafter referred to as the ----- Contractor for the Work at various locations within Region No. -- as defined in the Form of Bid.

WITNESSETH: That the OWNER and the Contractor for the consideration named agree as follows:

1. The Contractor shall Provide and shall perform all Work of every kind and nature whatsoever required and all other things necessary to complete in a proper and workmanlike manner the work of **Job Order Contract No. ----- Region No. -- ----- Contractor CR ---** in strict accordance with the Contract Documents as defined in the General Conditions, and shall perform all other obligations imposed on such Contractor by the Contract.
2. The Contractor agrees to Provide the Work of the Contract Documents and perform the tasks required by each individual Job Order issued pursuant to this Contract, which sum shall be deemed to be in full consideration for the performance by the Contractor of all the duties and obligations of such Contractor under the Contract using the following Adjustment Factors:

- a. Normal Working Hours: Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

(Specify to four decimal places)

- b. Other than Normal Working Hours: Contractor shall perform tasks during evening or night shift Monday to Friday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

(Specify to four decimal places)

- c. Non Pre-Priced Work: Contractor shall perform Non Pre-Priced Work multiplied by the adjustment factor of:

(Specify to four decimal places)

3. The Minimum Contract Value will be \$0.00. The Contractor is guaranteed to receive Job Orders totaling at least \$0.00 issued during the contract period. Funds will be obligated for the contract as Job Orders are issued.

The Maximum Contract Value is -----. The Contractor will not be issued Job Orders exceeding the Maximum Contract Value. However, the Contractor is not guaranteed to receive this volume of Work. The Owner has no obligation to issue Job Orders in excess of the Minimum Contract Value.

4. The term of the Contract is two years from the issuance of a notice of contract award or when the Maximum Contract Value has been ordered, whichever occurs first. There is a two (2) year option period.

Option Period: Both the Authority and the Contractor must mutually agree to extend the contract for the option period. The term of the option period is two years or when the Maximum Contract Value, or revised Maximum Contract Value, is ordered, whichever occurs first.

5. The Contractor shall commence and complete the work of each Job Order at the times specified in the Job Orders issued by the Owner and shall achieve Substantial Completion at the time specified in the Job Orders. The Contractor shall pay liquidated damages to the OWNER, as and if specified by the Owner for each Job Order for each and every day the Contractor fails to achieve Substantial Completion of the Work.

Signatures

IN WITNESS WHEREOF, the OWNER has executed this Contract No. ----- on the _____ day of _____, 2017.

Dormitory Authority
515 Broadway
Albany, New York 12207

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Contractor has caused this Contract No. ----- to be signed by its duly authorized officer on the _____ day of _____, 2017.

By: _____

Title: _____

Date: _____

- If a **corporation**, signer must be President, Vice-President or other authorized officer.
- If a **Limited Liability Company (LLC)**, signer must be a member or manager.
- If a **Limited Liability Partnership (LLP)**, signer must be a partner.
- If a **Limited Partnership**, signer must be a partner.
- If a **general partnership**, signer must be a partner.
- If a **sole proprietorship**, signer must be the owner.

ACKNOWLEDGEMENT OF DORMITORY AUTHORITY OFFICER EXECUTING AGREEMENT

STATE OF _____

COUNTY OF _____

On the _____ day of _____ in the year 2017, before me personally came LOUIS R. CIRELLI, JR. to me known, who, being by me duly sworn, did depose and say that he resides at Schenectady, New York, that he is the Director, Procurement of Dormitory Authority, the corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Notary Public

**ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING AGREEMENT
IF A CORPORATION**

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 2017, before me personally came _____,
to me known, who, being by me duly sworn, did depose and say that he/she resides at:
_____ that he/she is the _____ of
_____, the corporation described in and which
executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board
of Directors of said corporation.

Notary Public

**ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING AGREEMENT
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL**

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Iran Divestment Certification

1. By signing this certification and by signing Contract No. -----, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

2. Contract means the contract between the Dormitory Authority of the State of New York ("DASNY") and ----- ("Contractor") for the Job Order Contract No. ----- Region No. -- ----- Contractor CR --
-.

3. This certification is part of Contract No. ----- and is subscribed by and affirmed by the person entering into Contract No. ----- as true under the penalties of perjury.

Contractor Name: -----

By: _____

Print Name: _____

Title: _____



NEW YORK
STATE OF
OPPORTUNITY™

DASNY

JOB ORDER CONTRACTING PROGRAM

PAYMENT & PERFORMANCE BONDS BY JOB ORDER

CORPORATE HEADQUARTERS

515 Broadway
Albany, New York
12207-2964

T 518.257.3000
F 518.257.3100

NEW YORK OFFICE

One Penn Plaza, 52nd Fl.
New York, New York
10119-0098

T 212.273.5000
F 212.273.5121

BUFFALO OFFICE

539 Franklin Street
Buffalo, New York
14202-1109

T 716.884.9780
F 716.884.9787

www.dasny.org

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PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we:

_____ as Principal,
(Legal title of the Contractor)

(Street, City, State, Zip Code)

and _____ as Surety
(Legal title of Surety)

(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority - State of New York, 515 Broadway, Albany, New York 12207, as Obligee, hereinafter called Owner, in the amount of:

_____ and _____/100 Dollars
(Written Dollar Amount)

(\$ _____)
(Figure Dollar Amount)

WHEREAS, CONTRACTOR has by written agreement dated _____ entered into a Contract with Owner for Job Order Contracting:

Contract Number: _____

Job Order or Supplemental Job Order Number: _____

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Job Order or Supplemental Job Order, then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however, to the following conditions:

Labor and Materials Payment Bond

- A. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- B. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
- C. No suit or action shall be commenced hereunder by any claimant:
1. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two (2) of the following: 1) the Principal, 2) the Owner, or 3) the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained by said Principal, Owner, or Surety for the transaction of business, or served in any manner in which legal process may be served in the State of New York.
 2. After the expiration of one (1) year following the date on which Principal ceased work of said Contract, however, if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - 3.. Other than in a New York State court of competent jurisdiction in and for the county or other political subdivision of the State in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- D. The penal sum of this Bond is in addition to any other Bond furnished by the Contractor and in no way shall be impaired or affected by any other Bond.

E. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of Mechanics' Liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

Signed as of this _____ day of _____, 20_____.

IN THE PRESENCE OF:

_____ (Principal)	_____ (Surety)
_____ (Signature)	_____ (Signature)
_____ (Title)	_____ (Title)
_____ (Street Address)	_____ (Street Address)
_____ (City, State, Zip Code)	_____ (City, State, Zip Code)
_____ (Phone Number)	_____ (Phone Number)
_____ (Fax Number)	_____ (Fax Number)
_____ (Email Address)	_____ (Email Address)

Labor and Materials Payment Bond

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND
IF A CORPORATION

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

(street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary PublicACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

(street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we:

_____ as Principal,
(Legal title of the Contractor)

(Street, City, State, Zip Code)

and _____ as Surety
(Legal title of Surety)

(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority - State of New York, 515 Broadway, Albany, New York 12207, as Oblige, hereinafter called Owner, in the amount of:

_____ and _____/100 Dollars
(Written Dollar Amount)

(\$ _____)
(Figure Dollar Amount)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____ entered into a Contract with Owner for Job Order Contracting:

Contract Number: _____

Job Order or Supplemental Job Order Number: _____

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

- A. If the Contractor performs the Job Order or Supplemental Job Order, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph B.1.

- B. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
1. The Owner has notified the Contractor and Surety that the Owner is considering declaring a Contractor Default.
 2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete all Job Orders.
 3. The Owner has agreed to pay the Balance of all Job Order Prices to the Surety in accordance with the terms of the Contract or to a Contractor selected to perform the Job Orders in accordance with the terms of the Contract with the Owner.
- C. When the Owner has satisfied the conditions of Paragraph B, the Surety shall, at the Owner's option, promptly and at the Surety's expense take on the following actions:
1. Arrange for the Contractor, with consent of the Owner, to perform and complete Job Orders; or
 2. Undertake to perform and complete Job Orders itself, through its agents or through independent contractors; or
 3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Job Orders, arrange for a contract to be prepared for execution by the Owner and the Contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued on the Contract, and pay to the Owner the amount of damages as described in Paragraph E in excess of the Balance of the Job Order incurred by the Owner resulting from the Contractor Default.
- D. If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.
- E. After the Owner has declared a Contractor Default, and when the Surety acts under paragraph C1, C2, or C3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Job Order Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
1. The responsibilities of the Contractor for correction of defective work and completion of the Contract, including compliance with provisions of the General Conditions, Article 13 – Inspections and Acceptance.

2. Additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under paragraph C.
 3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- F. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Job Order Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.
- G. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
- H. Notice of the Surety and the Contractor shall be mailed or delivered to the address shown on the signature page. Notice to the Owner shall be mailed or delivered to the address shown in the preamble.
- I. Definitions:
1. **Balance of all Job Order Prices:** The total amount payable by the Owner to the Contractor under all Job Orders after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
 2. **Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 3. **Contractor Default:** Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 4. **Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.
- J. The penal sum of this Bond is in addition to any other Bond furnished by the Contractor and in no way shall be impaired or affected by any other Bond.

Performance Bond

K. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under this Contract

Signed as of this _____ day of _____, 20_____.

IN THE PRESENCE OF:

(Principal)

(Surety)

(Signature)

(Signature)

(Title)

(Title)

(Street Address)

(Street Address)

(City, State, Zip Code)

(City, State, Zip Code)

(Phone Number)

(Phone Number)

(Fax Number)

(Fax Number)

(Email Address)

(Email Address)

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND IF A CORPORATION

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

_____ (street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20___, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

_____ (street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

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JOB ORDER CONTRACTING PROGRAM

GENERAL CONDITIONS

CORPORATE HEADQUARTERS

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GENERAL CONDITIONS

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ARTICLE 1 -- DEFINITIONS

Section 1.01 - Definitions

The following terms as used in the Contract Documents shall be defined as follows:

Addendum or Addenda – Additional provisions of the Contract Documents issued in writing prior to the receipt of bids.

Application for Payment – A Contractor’s written billing request, on a form:

- A. prepared by the Owner from the Schedule of Values approved by the Owner;
- B. completed by the Contractor;
- C. adjusted by the Owner; and
- D. signed by the Contractor,

requesting partial or full payment for partial or full performance of the Contract.

Beneficial Occupancy – The stage in the performance of the Work prior to Substantial Completion when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize such portion of the Work for its intended use, evidenced by the Notice of Beneficial Occupancy executed by the Owner.

Change Order – Written notice, in a standard Owner’s form, to the Contractor, signed by the Contractor and executed by the Owner, changing the Contract Documents in accordance with General Conditions Article 7 - Changes in the Work, or a Forced Change Order.

Claim - A demand by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, an extension of time, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

Client - The entity for whom the Dormitory Authority is performing services, including subsidiaries, agents, related corporations, or fiduciaries of the entity.

Completion and Acceptance - The stage in the performance of the Work when all Work required to be performed by the Contract, except any Work that may be required in the future by:

- A. any warranty or guarantee in the Contract Documents;
- B. General Conditions Article 6 – Subcontracts, Sections 6.01 E through I;
- C. General Conditions Article 14 - Protection of Persons and Property; or
- D. General Conditions Article 15 – Insurance and Bonds,

is complete in accordance with the Contract Documents, evidenced by the Notice of Completion and Acceptance executed by the Owner.

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Contract Amendment – A written instrument, signed by an authorized officer of the Dormitory Authority and an authorized officer of Contractor, amending, modifying, changing, or supplementing the Contract.

Construction Manager - A natural person, partnership, limited liability company, corporation, or other legal entity regularly engaged in management of construction projects, and so designated by the Owner.

Consultant - A natural person, partnership, limited liability company, corporation, or other legal entity providing architectural, engineering, construction management, testing, inspection, commissioning, or other professional services, and so designated by the Owner.

Contract - The agreement between the Owner and the Contractor consisting of the Contract Documents.

Contract Documents - The Notice to Bidders, Information for Bidders, Form of Bid, Agreement, Payment Bond, Performance Bond, General Conditions, General Requirements, Drawings, Specifications, Addenda, Change Orders, Contract Amendments, and all provisions of law deemed to be included in the Contract.

Contractor - A natural person, partnership, limited liability company, corporation, or other legal entity with whom the Owner enters in to the Contract to perform the Work.

Design Professional - A natural person, partnership, limited liability company, corporation, or other legal entity providing architectural or engineering professional services, and so designated by the Owner.

Disputed Work Directive - Written directive, in a standard Owner's form, from and executed by the Owner to the Contractor directing the Contractor to proceed with the Work described in the Disputed Work Directive in accordance with General Conditions Article 10 – Claims and Disputes.

Dormitory Authority - Dormitory Authority of the State of New York, a public benefit corporation established by the laws of the State of New York with its principal office located at 515 Broadway, Albany, New York, 12207-2964.

Emergency Notice to Proceed – Written notice, signed by the Owner, to the Contractor, that directs the Contractor to start performance of the Work in response to an emergency as set forth in Section 1A.07E;

Extra Work - Any work in addition to the Work initially required to be performed by the Contractor pursuant to the Contract Documents.

Facility – the operating unit of the Client where the Site is located.

False Claim – Any Claim which is, either in whole or part, false or fraudulent.

False Representation – This action takes place when a person has knowledge of the value of the work and materials supplied, performed, or proposed (the “Information”) constituting the Claim, Change Order, or Application for Payment and either:

- A. acts in deliberate ignorance of the truth or falsity of the Information or
- B. acts in reckless disregard of the truth or falsity of the Information.

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Forced Change Order –Written notice, in a standard Owner’s form, to the Contractor, without the Contractor’s signature and executed by the Owner, changing the Contract Documents in accordance with General Conditions Article 7 – Changes in the Work.

Furnish - To deliver to the Site ready for installation.

Hazardous Material – any substance (gas, liquid, or solid) or agent (biological, chemical, radiological, physical, or having two or more of the preceding characteristics) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors, including but not limited to heavy metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, herbicides, dioxins, biological wastes, carcinogens, asbestos or any substance containing asbestos, polychlorinated biphenyls, lead, urea formaldehyde, explosives, radionuclides, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials, and any item defined as a hazardous, special, or toxic material, substance, or waste under any Hazardous Material Law, including, but not limited to, the NYS Environmental Conservation Law and Title 6 of the New York Code of Rules and Regulations.

Hazardous Material Laws – collectively, any present federal, state or local law, including all valid amendments, relating to public health, safety, or the environment, including without limitation, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1215 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq.; the Atomic Energy Act, 42 U.S.C. §2201 et seq.; the NYS Environmental Conservation Law; the NYS Labor Law; the NYS Public Health Law; and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter enacted or promulgated under any such statute.

Install - To unload at the delivery point at the Site and perform every operation necessary to establish secure mounting and correct operation at the proper location.

Letter of Intent - Written notice, signed by the Owner, to the Contractor, which accepts the Contractor’s Form of Bid and transmits the Agreement, Payment Bond, Performance Bond, and other documents to the Contractor for execution.

Means and Methods of Construction - Labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by the Contract Documents.

Notice of Beneficial Occupancy – Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner and delivered to the Contractor prior to Substantial Completion, that certain Work of the Contract Documents, identified in such Notice of Beneficial Occupancy, satisfies the criteria for Beneficial Occupancy and will be occupied or utilized by the Owner or Client.

Notice of Completion and Acceptance – Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work required to be performed by the General Requirements, Drawings,

GENERAL CONDITIONS

Specifications, Addenda, and Change Orders, except any Work required by any warranty or guarantee in the Contract Documents, satisfies the criteria for Completion and Acceptance.

Notice of Physical Completion- Written notice, in a standard Owner's form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Physical Completion.

Notice of Substantial Completion - Written notice, in a standard Owner's form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Substantial Completion and constitutes the start of the guarantee period.

Notice to Proceed –

- A. Written notice, signed by the Owner, to the Contractor, that acknowledges receipt by the Owner of the signed Agreement, Payment Bond, and Performance Bond from the Contractor and directs the Contractor to start performance of the Work; or
- B. Written notice, in a standard Owner's form, to the Contractor, executed by the Owner, directing the Contractor to proceed with the change in the Work described therein in accordance with General Conditions Article 7 – Changes in the Work. A Notice to Proceed cannot change the Contract amount or the date to achieve Substantial Completion. A Notice to Proceed can change only the General Requirements, the Drawings, or the Specifications.

NYS – New York State

Other Contractor(s) – The one or more natural persons, partnerships, limited liability companies, corporations, or other legal entities who have entered in to a contract with the Owner to perform work (including services) at or near the Site, identified in the Contract Documents or in writing by the Owner, including, but not limited to, contractors, Construction Managers, Consultants, and Design Professionals. Other Contractors does not include the Contractor.

Owner - Dormitory Authority of the State of New York.

Owner's Representative - A natural person, partnership, limited liability company, corporation, or other legal entity so designated by the Owner to act on behalf of the Owner. See General Conditions Section 2.03 for limitations and further provisions on the Owner's Representative.

Physical Completion – The stage in the performance of the Work when all Work to be performed at the Site, except any Work that may be required in the future by any warranty or guarantee in the Contract Documents, is complete in accordance with the Contract Documents, evidenced by the Notice of Physical Completion executed by the Owner.

Project - The work at or near the Site(s) carried out pursuant to the Contract and one or more other contracts.

Project Management Program – The software program used by the Owner to manage, monitor, and oversee performance of the Contract.

Provide - To Furnish and Install the Work complete in place and ready for its intended use.

Schedule of Values – a form provided by the Owner, completed by the Contractor, and submitted to the Owner for review and written approval; the completed, approved form establishes a minimum level of allocation of the Contract amount among the items of Work to formulate the Contractor's billing requests.

GENERAL CONDITIONS

Site - The area(s) within the Contract limit, as indicated by the Contract Documents.

Stop Work Order - Written notice, signed by the Owner, to the Contractor, to cease or hold Work of the Contract Documents.

Subcontract - An agreement between the Contractor and Subcontractor for Work on the Site.

Subcontractor - A natural person, partnership, limited liability company, corporation, or other legal entity under contract with the Contractor, or under contract with any Subcontractor, to perform any portion of the Work, or to provide any labor, material, equipment, or service at the Site.

Substantial Completion – The stage in the performance of the Work when all Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize the Work for its intended use, evidenced only by the Notice of Substantial Completion executed by the Owner. Issuance of a temporary certificate of occupancy or a temporary approval for occupancy does not establish Substantial Completion.

Work - All obligations explicitly and implicitly imposed upon the Contractor by the Contract Documents.

Section 1.02 – Additional Definitions for Job Order Contracting Projects

The following terms as used in the Contract Documents shall be defined as follows:

Adjustment Factor – One or more price adjustment factors to the Unit Prices published in the Construction Task Catalog®. Each Adjustment Factor is expressed as an increase or decrease from the Unit Prices. The Construction Task Catalog® identifies the costs covered by an Adjustment Factor. The Adjustment Factors are set forth in the Contractor's Form of Bid.

Completion and Acceptance of a Job Order – the Owner's determination that all work of a Job Order has been completed in accordance with the Job Order and other Contract Documents.

Construction Task Catalog® - The annual list of specific construction related tasks together with a specific unit of measurement and a Unit Price, also referred to as the Unit Price Book. The Construction Task Catalog® is developed by the Gordian Group for the Dormitory Authority and revised and updated annually. The Construction Task Catalog® for an individual Job Order is the Construction Task Catalog® for the year in which the individual Job Order is issued to the Contractor.

Contract Documents – The Notice to Bidders, Information for Bidders, Form of Bid, Agreement, Payment Bond, Performance Bond, General Conditions, General Requirements, Specifications, Addenda, Change Orders, Job Orders, Construction Task Catalog®, and all provisions of law deemed to be included in the Contract.

Detailed Scope of Work – The form, and the related drawings, specifications, and writings incorporated therein, which together set forth the specific requirements and items of work to be accomplished by the Contractor pursuant to an individual Job Order.

Job Order – The document that sets forth the Detailed Scope of Work to be accomplished, the price to be paid therefore, and the Job Order Completion Time.

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Job Order Amount – the amount the Owner will pay the Contractor for completion of a Job Order, performance of the Detailed Scope of Work, and compliance with the Contract Documents.

Job Order Completion Time – The period of time allotted to the Contractor to achieve Completion and Acceptance of a Job Order.

Joint Scope Meeting – A meeting at the Site to discuss the proposed work before the Detailed Scope of Work is completed.

Maximum Contract Value – The maximum dollar value of the sum of the Job Order Amounts of the Job Orders that can be ordered under this Contract during the base term of the Contract and any of the options to the Contract.

Minimum Contract Value – the minimum dollar value of the sum of the Job Order Amounts of the Job Orders that can be ordered under this Contract during the base term of the Contract.

Non-Prepriced Task – A task or item of work required by a Detailed Scope of Work not included in the Construction Task Catalog®, but within the general scope and intent of this Contract.

Normal Working Hours – The hours from 7:00 am to 5:00 pm Monday to Friday except legal holidays.

Other Than Normal Working Hours – The hours from 5:00 pm to 7:00 am Monday to Friday and any time on Saturday, Sunday, and holidays.

Prepriced Task – A task or item of work required by a Detailed Scope of Work and included in the Construction Task Catalog® for which a Unit Price has been established.

Proposal – Also referred to as the Price Proposal, Proposal Package, or Price Proposal Package. The Contractor prepared document quoting a lump sum, fixed price, and schedule for completion of the Detailed Scope of Work included in the Request for Proposal. The Proposal, when appropriate, shall also contain drawings, sketches, specifications, required permits or certificates, catalog cuts, technical data, samples, M/WBE participation information, and such other documentation as the Owner requires for a specific Job Order.

Request for Proposal (RFP) – The document issued by the Owner which formally requests the Contractor to prepare a Proposal for a Detailed Scope of Work.

Supplemental Job Order – A Change Order issued under Section 1A.09 of this Contract.

Unit Price – The price published in the Construction Task Catalog® for a specific task comprised of the labor, equipment, and material costs to accomplish that specific task.

ARTICLE 1A – JOB ORDER CONTRACTING

Section 1A.01 - Work Scope and Pricing

- A. The Contractor shall perform the Work described in the Detailed Scope of Work referenced in each Job Order. The Contractor may be required to perform Work at various locations within the geographic limits defined in the Contract. Notwithstanding the foregoing, Owner and Contractor may mutually agree to the assignment of Work in another geographic region.
- B. The price of each Job Order shall be:

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1. The sum of the following calculation for each Pre-priced Task: the Unit Price multiplied by the quantity, multiplied by the appropriate Adjustment Factor; plus
 2. The total of all Non-Pre-priced Tasks set forth in the Job Order
 3. The total of allowable and approved reimbursable expenses.
- C. The Contractor shall obtain all approvals, permits and third-party inspections required for the Work and shall prepare all required filings, requests and related documentation. If the Contractor is required to pay fees under this section, including but not limited to building permit fees, and fees to the City of New York or other governmental agency, the amount of said fee paid by the Contractor for which a receipt is obtained shall be paid without mark-up as a reimbursable expense. The cost of expediting services or equipment use fees are not reimbursable. The Contractor shall obtain all final approvals for the Work, in the form of such certificates that are required by all governmental agencies having jurisdiction over the Work.
- D. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings required for filing. Said services shall be performed by a licensed design-professional and the fee for such services for which a receipt is obtained shall be paid without mark-up as a reimbursable expense..

Section 1A.02 - Minimum and Maximum Contract Values

- A. The Minimum Contract Value is \$0, as indicated in the Information for Bidders.
- B. The Maximum Contract Value is indicated in the Information for Bidders. The Contractor will not be issued Job Orders exceeding the Maximum Contract Value.
- C. The Contractor is not guaranteed any specific Job Order or contract value.

Section 1A.03 - Contract Term

- A. Base Term: The Base Term of this Contract shall commence on the effective date of the Notice of Contract Award. The Base Term shall be for one year or when Job Orders totaling the Maximum Contract Value have been issued, whichever occurs first. A Job Order is issued when DASNY submits a written Job Order to the Contractor to perform Work. Job Orders may not necessarily be completed during the term of the Contract.
- B. Option Terms: There are three (3) one-year option periods. DASNY may, at its sole discretion may extend its right to issue and/or implement Job Orders to Contractor for three (3) additional 1-year option periods, provided DASNY gives Contractor written notice of such option at least 45 days prior to the expiration of the Base Term or prior option period. The term of each option period is one year or when Job Orders totaling the original Maximum Contract Value have been issued, whichever occurs first. In the event Owner does not exercise an option period, Contractor shall continue to perform all pending Job Order Work to completion as set forth in this Contract.
- C. Supplemental Job Orders: Notwithstanding anything contained herein to the contrary, Owner may issue supplemental Job Orders for field conditions, credits or back charges subsequent to the expiration of the Base Term and any option period.

Section 1A.04 – Annual Update of the Construction Task Catalogs®

- A. The Construction Task Catalog® issued as part of the bid documents shall be in effect as of the date of Contract award. The Construction Task Catalog® shall be updated annually by the Gordian Group on or about August 1st of each successive year thereafter. The Contractor shall use the Construction Task Catalog® in effect on the date the Price Proposal is due and shall not delay the submission of a Price Proposal to incorporate pricing in an updated Construction Task Catalog®.
- B. The Adjustment Factors for this Contract are set forth below. When Preparing a Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.
- C. The Adjustment Factors will be applied as follows:
 - a. Normal Working Hours: Monday to Friday 7:00 am to 5:00 pm except holidays.
 - b. Other Than Normal Working Hours: Monday to Friday 5:00 pm to 7:00 am and all day Saturday, Sunday and holidays.
 - c. Non Pre-Priced Task.
 - d. Such other Adjustment Factors set forth in the applicable Notice to Bidders.
- D. The Adjustment Factors bid shall remain in effect for the Base Term and any option periods for the Contract.
- E. The Contractor's Adjustment Factors shall not be adjusted during the term of this Contract.
- F. Should the Contractor submit a Price Proposal with inaccurate Adjustment Factors, the Contractor shall not be entitled to compensation in excess of the amount due as calculated in accordance with the correct Adjustment Factors.

Section 1A.05 – Scope Development

- A. If a need for performance by the Contractor under this Contract arises, the Owner shall notify the Contractor by issuing a Notice of Joint Scope Meeting. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
 - 1. The general scope of the work needed;
 - 2. Methods and alternatives for accomplishing the work;
 - 3. Access to the site and protocol for admission;
 - 4. Hours of operation;
 - 5. Staging area;
 - 6. Requirements for catalog cuts, technical data, samples and shop drawings;
 - 7. Requests for additional information;
 - 8. Construction schedule and Substantial Completion date;
 - 9. Liquidated damages;
 - 10. Specific quality requirements for equipment and materials;
 - 11. The presence of Hazardous Materials; and
 - 12. The date when the Proposal is due.
 - 13. The names of the Owner's project manager, the Contractor's superintendent and project manager, the Client's representative(s), and the Design Professional's project manager.
 - 14. Opportunities for MWBE and SDVOB participation and the submission of utilization plans.

- B. Upon completion of the Joint Scoping Meeting, the Owner shall prepare, or cause to be prepared, a draft Detailed Scope of Work together with any sketches, drawings, and specifications required to describe the work to be accomplished by the Job Order. The Owner shall provide the draft Detailed Scope of Work to the Contractor and other parties designated by the Owner for comments. When a Detailed Scope of Work acceptable to the Owner has been prepared, the Owner shall issue to the Contractor a Request for Proposal. In response, the Contractor shall prepare a Proposal for the work under consideration based on the Detailed Scope of Work.
- C. The Contractor does not have the right to refuse to perform any task or Work included in a particular Job Order. Any refusal to perform Work included in a Job Order is a cause for termination of this Contract under General Conditions Section 11.01 – Termination for Cause.
- D. The Owner may, at its option, include quantities in the Detailed Scope of Work to help define the Detailed Scope of Work. If the actual required quantities are not included, not known, cannot be determined at the time the Detailed Scope of Work is prepared, or if the Contractor and the Owner cannot agree on the quantities required, the Owner shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

Section 1A.06 – Proposal Preparation

- A. The Contractor shall prepare each Proposal in accordance with the following:
 - 1. Pre-priced Tasks: The Contractor shall identify each task required for the Detailed Scope of Work listed in the Construction Task Catalog® currently applicable to the Contract and for each task identified, determine the quantity of such task required to complete the Detailed Scope of Work.
 - 2. Non-Pre-priced Tasks: The Owner shall identify each task required for the Detailed Scope of Work not listed in the Construction Task Catalog® currently applicable to the Contract and for each such task:
 - a. Provide complete specifications and technical data, including, but not limited to, task content, support drawings, task cost data, quality control requirements and inspection requirements.
 - b. The extended price for a Non-Pre-priced Task shall be determined by multiplying the price for a single unit of the task by the quantity required. The price in the Proposal shall be determined by multiplying the extended price by the Contractor’s Non-Pre-priced Task Adjustment Factor.
 - c. After a Non-Pre-priced Task is used for three separate Job Orders, and if the Owner approves, the price for such task shall be established as a permanent Pre-priced Task which will be utilized without application of any additional Adjustment Factors and will no longer require price justification.

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3. The Owner's determination of the scope of a task, the appropriateness of the task for a Job Order, and the classification of a task as Pre-priced or Non-Pre-priced shall be final, binding and conclusive as to the Contractor.
4. The Contractor's Proposal shall include at a minimum:
 - a. Price Proposal;
 - b. Non-Pre-priced Tasks
 - c. Catalog cuts, technical data or samples;
 - d. List of all anticipated Subcontractors (which includes suppliers);
 - e. Estimated MWBE & SDVOB utilization percentage and dollar amounts;
 - f. Proposed construction schedule (including notification schedule for Hazardous Material remediation) showing achieving Substantial Completion by the date in the Detailed Scope of Work.
 - g. Any other items required by the Owner in the Request for Proposal.
5. The Contractor shall submit the Proposal by the date specified in the Request for Proposal. The Owner may reject any incomplete proposal. The complexity and urgency of the Job Order will determine the time for preparation of the Contractor's Proposal. Failure of the Contractor to deliver a Proposal within the time allowed on two or more occasions is cause for termination of this Contract under General Conditions Section 11.01 – Termination for Cause.
6. Minimum Set-up Charge: For Job Orders where the total value is less than the Minimum Set-Up Charge. The Minimum Set-Up Charge will be 8 hours of the Labor rate for the required trade(s) plus one day of rental for required equipment plus the material cost from the Construction Task Catalog®.
7. If the Contractor will perform the task with its own forces, Owner reserves the right to require Contractor to submit three (3) independent quotes for all material and equipment to be installed. If the Work or task is to be subcontracted, the Owner reserves the right to require the Contractor to submit three (3) independent quotes from Subcontractors as justification of any Work or task subcontracted. Contractor shall not submit a quote from a Subcontractor (which includes suppliers) who the Contractor is not prepared to use. The Owner may require additional quotes if a Subcontractor is unacceptable or if the Owner, in its sole and exclusive discretion, determines the prices are unreasonable. If so required by Owner, the final Job Order price shall be determined by multiplying the lowest acceptable proposal by the Non-Pre-priced (NPP) formula.
8. The adjustment for reimbursable expenses shall be 1.0000.

Section 1A.07 – Review of the Proposal and Issuance of a Job Order

- A. The Owner shall evaluate the Proposal and proposed tasks and compare them with the Owner's cost estimate of the Detailed Scope of Work to determine the reasonableness of the Contractor's Proposal, including the nature and quantity of the tasks proposed.
- B. The Owner reserves the right to reject a Proposal for any reason. The Owner also reserves the right not to issue a Job Order if the Owner determines it is in the Owner's best interest not to issue a Job

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Order or if the Proposal exceeds the Owner's estimate. If the Owner does not issue a Job Order for any reason, the Contractor shall have no Claim against the Owner for the cost of preparing a Proposal. If the Owner does not issue a Job Order for any reason, the Owner may pursue performance of the Detailed Scope of Work by other means. Contractor's submission of two or more Proposals that substantially exceed the Owner's estimate or that have substantially unrealistic construction schedules is a cause for termination of this Contract under General Conditions Section 11.01 – Termination for Cause.

- C. By submitting a signed Proposal to the Owner, the Contractor agrees to complete the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted and within the time proposed. It is the Contractor's responsibility to include the necessary tasks and quantities in the Proposal prior to delivering the Price Proposal to the Owner.
- D. Each Job Order provided to the Contractor shall incorporate the Detailed Scope of Work and set forth the Job Order Amount and the Job Order Completion Time. All clauses of the Contract apply to each Job Order. The Job Order signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Proposal. A signed copy shall be provided to the Contractor.
- E. In the event that Owner determines an immediate emergency response is necessary the Contractor shall be required to follow alternative procedures as established by the Owner, including but not limited to, the issuance of an Emergency Notice to Proceed. The Contractor shall begin work pursuant to such Emergency Notice to Proceed or as otherwise directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Owner shall then submit the aforementioned Request for Proposal, Detailed Scope of Work, and Job Order to the Owner as soon as practicable, and the Contractor shall provide the requisite responses as soon as practicable. The Contractor shall be compensated in accordance with the Construction Task Catalog® and Non-Pre-priced Tasks as if the Work had been ordered under Section 1A.01 of this Article.
- F. For Life/Safety issues where a response is required within 24 hours the Minimum Set-Up Charge will be 8 hours of the Labor rate for the required trade(s) plus one day of rental for required equipment plus the material cost from the Construction Task Catalog®.

Section 1A.08 – JOC System License

A. Job Order Contracting Software:

The Owner selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for their JOC program. The Gordian JOC System includes Gordian's proprietary eGordian® and Gordian Cloud JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Job Order Price Proposals, Change Orders, subcontractor lists, and other requirements specified by the Owner. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following JOC System License.

B. JOC System License

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1. Gordian has issued a JOC System License to the Owner, which permits the Owner to allow the Contractor to use Gordian's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information"). The Owner hereby grants to the Contractor, and the Contractor hereby accepts for the term of this Contract or Gordian's Contract with the Owner, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's Proprietary Information to be used for the sole purpose of executing Contractor's responsibilities to the Owner under this Contract ("License Agreement"). The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's JOC Applications and support documentation, Construction Task Catalog®, training materials and other Gordian provided proprietary materials. In the event this Contract expires or terminates as provided herein, or Gordian's Contract with the Owner expires or terminates, the License Agreement shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.

2. The License Agreement may be terminated in the event of: (1) any breach of a material term of this Agreement by the Contractor which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

3. The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor.

4. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Owner, this JOC System License shall take precedence.

Section 1A.09 – Changes in the Work

- A. In addition to any other rights contained in Article 7—Change In the Work, Owner may, in writing, without invalidating the Contract, order changes in the Work by altering, adding or deducting from the Work of the Job Order through a new or changed Detailed Scope of Work followed by issuing a Change Order. Change Orders shall not materially alter or change the scope or nature of a Job Order. There shall be a Change Order for all approved changes in the Work.. No alteration to the Change Order form shall be accepted and no payment shall be due the Contractor until said Change Order is executed by the Owner. If the Job Order Completion date is affected by a change, an increase or decrease to the duration, in days shall be included in the Change Order.
- B. The Owner may process a Forced Change to the Work if the Contractor disagrees with the changes in the Work. The Contractor must comply with the changes in the Work, and continue with the Work subject to Article 10 - Claims and Disputes.
- C. Unless otherwise provided for in Article 7 –Changes in the Work, all extra work shall be paid for at the Unit Prices set forth in the Construction Task Catalog® or as Non-Pre-priced Tasks. Credits for the deletion of Work shall be priced in the same manner. No claims for extra work will be allowed unless the Contractor complies with Article 10 – Claims and Disputes.

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- D. Extra work or credit work that is identified on a Project after a Job Order has been issued will be carried out by issuing a separate Job Order or Change Order. The issuance of a separate Job Order or Change Order shall be in the Owner's sole discretion.

ARTICLE 2 -- CONTRACT DOCUMENTS

Section 2.01 - Captions

The table of contents, titles, captions, headings, running headlines, and marginal notes contained herein and in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect the interpretation of the provisions to which they refer.

Section 2.02 – Electronic Data Transfer

- A. Electronic data includes, but is not limited to, all digital versions of any Contract Document, all digital files produced by mechanical, facsimile, electronic, magnetic, digital or other programs, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including but not limited to, word processing documents, spreadsheets, database files, charts, graphs, drawings, specifications, outlines, electronic mail, personal digital assistant messages, instant messenger messages, PDF files, PRF files, batch files, ASCII files, DWG files and any other type of files now or hereafter allowed by Owner.
- B. The Owner reserves the right to implement an electronic payment program for payments due the Contractor. Prior to implementation, the Owner, in writing, shall notify the Contractor one hundred twenty (120) calendar days prior to the effective date of the electronic payment program. Commencing on or after the electronic payment effective date, all payments, due the Contractor, shall only be rendered electronically, unless payment by paper check is authorized in writing by the Owner. Commencing on or after the electronic payment effective date, the Contractor, further acknowledges and agrees that the Owner may withhold payments, if the Contractor has not complied with the Owner's policies and procedures relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the Owner.
- C. Electronic data produced in connection with the Contract is proprietary information of the Owner and to be treated as confidential and not to be disclosed to, or shared with others outside the limits of the Contract without the express written consent of the Owner. The Owner makes no warranty, express or implied, as to the accuracy of the information transferred.
- D. The Contractor shall pay, on behalf of the Owner, any loss which the Owner becomes legally liable to pay as a result of a claim by any person or entity against the Contractor or Owner, which results directly from an act, error, or omission of the Contractor in the provision of electronic data in respect to the Contract.

Section 2.03 - Owner

- A. The Contract constitutes the entire agreement and understanding between the Contractor and the Owner with respect to the Project and supersedes all prior agreements, arrangements and understandings, and all trade custom and trade usage, and the construction of any provision of the Contract shall not be affected by the wording of any other agreement, whether between the Contractor and the Owner or involving other parties. The Contract may not be amended, modified, supplemented, or changed in any way except in accordance with General Conditions Article 7 – Changes in the Work or a Contract

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Amendment. The legal relationship between the Owner and the Contractor shall be governed solely by the Contract and no rights shall arise on any other basis, including but not limited to, oral agreement, partial performance, estoppel, conduct of the parties, course of conduct or any other course of dealing involving the Project or any other project. The meaning and intent of the Contract Documents shall be interpreted solely by the Owner.

- B. The Owner shall give all orders and directions contemplated under the Contract relative to the execution of the Work. The Owner shall determine the amount, quality, and acceptability of the Work and shall decide all questions which may arise in relation to said Work. The Owner's estimates and decisions shall be final except as otherwise expressly provided herein.
- C. The Owner may, at its sole and exclusive discretion, waive certain provisions of the Contract Documents. Such waiver shall only be done by written instrument signed by a duly authorized officer of the Owner, and any such waiver shall apply solely in accordance with its terms and shall not act as a waiver of any provision of the Contract Documents, or estoppel against the enforcement thereof, in connection with any subsequent or separate event involving the Project or other projects.
- D. Any differences or conflicts concerning performance which may arise between the Contractor and Other Contractors performing work for the Owner shall be analyzed and resolved by the Owner as warranted by the circumstances. The Owner's exercise of discretion in this regard shall be sole and exclusive and its decision concerning such differences and conflicts shall be final and binding.
- E. The Owner may act through an Owner's Representative designated as such in writing by the Owner. Unless otherwise designated by the Owner, the Owner's Representative is the Owner's employee assigned to the Project as the project manager. Unless otherwise stated in writing by the Owner, the Owner's Representative is not an authorized officer of the Owner, does not have authority to approve a Labor Rate Worksheet on behalf of the Owner, does not have authority to waive the requirement for a narrative and fragnet schedule of General Conditions Section 7.01 C. 4, does not have authority to waive any provision of the Contract Documents and does not act for the Owner for General Conditions Article 15 – Insurance and Bonds. Unless otherwise stated in writing by the Owner and notwithstanding the other provisions of this paragraph, the Owner's Representative does have authority to issue a direction to attend a meeting in accordance with General Conditions Section 4.04, a Notice to Proceed in accordance with General Conditions Section 7.01 and a Disputed Work Directive in accordance with General Conditions Section 10.01. The Owner may change the Owner's Representative and the scope of her, his or its duties by written notice to the Contractor in accordance with General Conditions Section 2.04. The Owner's Representative's signature by itself on a Change Order is not execution of a Change Order by the Owner. See General Conditions Section 7.01 A. 5 for the requirements for execution of a Change Order by Owner.

Section 2.04 - Notice and Service Thereof

- A. Any notice to the Contractor from the Owner relative to any part of the Contract shall be in writing and service considered complete when said notice is sent or delivered in person to the Contractor or its authorized representative, at the street address, postal address or email address given by the Contractor in the Form of Bid. The Contractor may change any of these addresses by written notice to the Owner's Procurement Unit, 515 Broadway, Albany, New York 12207 - 2964; such change shall not be effective until Contractor receives from the Owner's Procurement Unit a written acknowledgement that the change has been received.
- B. Any notice from the Contractor to the Owner required by any part of the Contract shall be in writing and shall be sent or delivered to the Owner's Representative at the street address, postal address or

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email address for the Owner's Representative given in the Notice to Bidders. The Owner may change the Owner's Representative or any of these addresses by written notice to the Contractor. If any part of the Contract shall require the Contractor to provide notice to any other employee or unit of the Owner, the notice to such employee or unit is in addition to, and does not replace, the notice to the Owner's Representative. Notice to the Owner may be delivered by certified mail, overnight delivery by a nationally recognized courier or, if an email address is provided, email. The Owner's Representative will endeavor to provide a written acknowledgment of receipt of the notice but any failure to provide such written acknowledgment shall not be a breach of the Contract, shall not in any way alter the Contractor's obligation to provide timely notice and shall not in any way alter any of the other obligations of the Contractor under the Contract.

- C. For all notices from the Contractor to the Owner required by any part of the Contract, the Contractor shall have the burden of proving the Owner's receipt of the notice.

Section 2.05 - Nomenclature

Materials, equipment, or other Work not defined or specified in the Contract but described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Contract.

Section 2.06 - Invalid Provisions

If any term or provision of the Contract Documents or the application thereof to any natural person, partnership, limited liability company, corporation or other legal entity or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to natural persons, partnerships, limited liability companies, corporations or other legal entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract Documents shall be valid and be enforced to the fullest extent permitted by law. It is the intent of the Owner and the Contractor that all provisions of the Contract shall be construed to be valid under applicable law and shall be enforced to the maximum extent possible.

Section 2.07 – Interpretation of Contract Documents

- A. Should any provision in the Contract Documents be in conflict or inconsistent with the General Conditions or supplements thereto, the General Conditions or supplements thereto shall govern.
- B. Figured dimensions shall take precedence over scaled dimensions. Larger scale Drawings shall take precedence over smaller scale Drawings. Latest Addenda shall take precedence over previous Addenda and earlier dated Drawings and Specifications.
- C. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity of material or more onerous provision in the Owner's judgment shall govern, regardless of cost, unless the Owner directs otherwise in writing. In each conflict, the Owner, in its sole and exclusive discretion, shall determine whether the quality, quantity or onerous provision method will be used to resolve the conflict.
- D. Drawings and Specifications are complementary. Anything shown on the Drawings and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Drawings, shall have the same effect as if shown or mentioned in both.

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- E. The term “materials” includes “supplies”.
- F. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa.

Section 2.08 - Copies of Contract Documents

The Owner may furnish to the Contractor up to three (3) paper copies and one electronic (PDF) copy of the Contract Documents without charge. Additional sets may be furnished at the costs of reproduction and mailing.

ARTICLE 3 -- SITE CONDITIONS

Section 3.01 - Subsurface or Site Conditions Found Different

- A. The Contractor acknowledges that the Contract amount set forth in its bid includes such provisions which the Contractor deems sufficient for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract Documents, or borings, reports, rock cores, foundation investigation reports, topographical maps, or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of bids.
- B. The Owner assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to the Contractor.
- C. Should the Contractor encounter subsurface or site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Contractor shall immediately give written notice to the Owner of such conditions and shall not disturb said conditions until authorized to do so by the Owner in writing.
- D. Subsurface or site conditions found materially differing from those that could have been reasonably anticipated may be cause for change to the Contract amount and time of completion. This determination will be made at the sole and exclusive discretion of the Owner.

Section 3.02 - Verifying Dimensions and Conditions

- A. The Contractor shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. If said dimensions or conditions are found to conflict with the Contract Documents, the Contractor immediately shall refer said conflict to the Owner in writing. The Contractor shall comply with any revised Contract Documents.
- B. During the performance of the Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- C. The Contractor shall review all Contract Documents to determine exact location of all Work and verify spatial relationships of all the Work. Any question concerning said location or spatial relationships shall be submitted in a manner approved by the Owner.

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- D. Special locations for equipment, pipelines, ductwork, and other such items of the Work, where not dimensioned on plans, shall be coordinated with affected Other Contractors.
- E. The Contractor shall be responsible for the proper fitting of the Work in place.

Section 3.03 - Surveys

Unless otherwise expressly provided in the Contract Documents, the Owner shall furnish the Contractor all surveys of the property necessary for the Work, but the Contractor shall lay out the Work.

ARTICLE 4 -- CONTRACTOR

Section 4.01 - Representations of Contractor

The Contractor represents and warrants:

- A. That it is financially solvent and is experienced in and competent to perform the Work, and has the staff, workers, equipment, subcontractors, and suppliers to complete the Work within the time specified for the Contract amount.
- B. That it is familiar with all federal, state, and local laws, codes, ordinances, orders, rules, and regulations which may affect the Work, the Contractor, or the Project.
- C. That all temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and that said construction will not injure any person or damage any property.
- D. That it has carefully examined the Contract Documents and the Site, and from the Contractor's own investigations is satisfied as to the nature and materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or items which may affect the Work.
- E. That it is satisfied that the Work can be performed and completed as required in the Contract Documents, and warrants that it has not been influenced by any oral statement or promise of the Owner or the Design Professional.
- F. That to the best of Contractor's knowledge, there are no pending or threatened suits, proceedings, judgments, rulings, or orders by or before any court or any governmental agency or arbitrator that could reasonably be expected to affect materially and adversely:
 - 1. the financial condition or operations of the Contractor;
 - 2. the ability of the Contractor to perform its obligations hereunder; or
 - 3. the legality, validity, or enforceability of this Contract.
- G. That Contractor is a duly organized and validly existing entity of the type described in the recital clauses of the Agreement and is in good standing under the laws of the jurisdiction of its formation; it has the legal right, power, and authority and is qualified to conduct its business and to execute and deliver this Contract and perform its obligations under this Contract; and all regulatory authorizations have been obtained and will be maintained, as necessary, for it to perform legally its obligations under this Contract.

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- H. That executing and performing this Contract are within Contractor's powers; that executing and performing this Contract has been duly authorized by all necessary action on the Contractor's part; and that such actions do not and will not violate any provision of law or any rule, regulation, order, writ, judgment, decree, or other determination presently in effect applicable to Contractor or its governing documents.
- I. That this Contract constitutes the Contractor's legal, valid, and binding obligation, enforceable against it in accordance with this Contract's terms, subject to applicable bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally, and general equitable principles, to the discretion of the court before which proceedings to obtain the same may be pending.
- J. That Contractor is in good standing with any union with craft labor on the Site for part or all the Work of this Contract or the work of the Project.
- K. That Contractor is experienced in the methods of design, engineering, installation, management, and construction contemplated for the Work of this Contract and for contracts of this nature, scope magnitude and quality and that the Contractor understands the complexity involved in this type of Contract and the necessity to coordinate its Work with appropriate governmental agencies, the Owner, and the Other Contractors.
- L. That Contractor is fully informed as to all existing conditions and limitations, including local workforce/labor working arrangements and the continuous, regular, and uninterrupted operations of the Facility.
- M. That Contractor has had the opportunity to consult with or has consulted with legal counsel of its choice before entering in to this Contract.
- N. That any breach of any of the representations and warranties of this General Conditions Section 4.01, any failure of the Contractor to familiarize itself with the Contract Documents, the Facility, the Site or the Project or any lack of knowledge on the part of the Contractor of any existing or foreseeable condition or conditions at the Site reasonably inferred from the Contract Documents which create difficulties or hindrances in the execution of the Work shall constitute a conclusive and binding determination by the Contractor that resolving any adverse impact of such breach, failure or lack of knowledge does not constitute Extra Work and a waiver by the Contractor of all Claims for additional compensation or damages or time to achieve Substantial Completion as a result of the breach, failure or lack of knowledge.

Section 4.02 - Errors or Discrepancies

The Contractor shall examine the Contract Documents thoroughly before commencing the Work and report any errors or discrepancies to the Owner, in writing, within fifteen (15) calendar days of discovery. The Owner shall not be responsible for costs, damages or delays due to the Contractor's failure to comply with the requirements of this General Conditions Section 4.02.

Section 4.03 - Coordinated Composite Drawings

- A. The Contractor shall prepare coordinated composite drawings clearly showing how the Work of the Contractor is to be performed in relation to the work of Other Contractors, prepare scaled drawings and sections in the same digital software program, version, and operating system as the original Contract Drawings or in an operating system approved by the Owner.

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- B. If, and only if, required by the Information for Bidders for the Contract, the Contractor shall run a conflicts and coordination check utilizing the Project Drawings within a three-dimensional software program of the Contractor's choice to limit the number of physical conflicts that may occur during construction. Failure to run such a conflicts and coordination check or to resolve conflicts and coordination issues identified as a result of such a check prior to the initiation of the Work on Site shall constitute a:
1. conclusive and binding determination by the Contractor that resolution of the conflicts does not involve Extra Work; and
 2. waiver by the Contractor of all Claims for additional compensation, damages, or time to achieve Substantial Completion as a result of the existence of physical conflicts.

Section 4.04 - Meetings

The Contractor shall attend all meetings required by the Contract Documents and all meetings when directed to attend by the Owner. The Contractor shall be represented at all meetings by the on-Site superintendent described in General Conditions Section 4.05 A who shall attend the meetings in person unless the Owner in writing prior to the meeting directs otherwise. If the Owner directs, the Contractor shall be represented either by the project management personnel of General Conditions 4.05 B or by an authorized officer of Contractor; in each case, the project management personnel or the authorized officer shall attend the meetings in person. The Owner, in its sole and exclusive discretion, shall determine the time, date, location, and purpose of the meeting. The purpose of a meeting includes, but is not limited to, Project progress, submittal status, Change Orders, site logistics, coordination, inspections, testing, safety reviews, or anything which the Owner determines is useful for administration or performance of the Contract or the Project.

Section 4.05 - Supervision by Contractor

- A. The Contractor shall provide full-time competent supervision for the duration of the Contract. During the course of on-Site Work, the Contractor shall provide a full-time on-Site superintendent who shall have full authority to act for the Contractor at all times. The superintendent shall read, write, and speak English fluently, as well as communicate with the Contractor's workers and the workers of all Subcontractors.
- B. The Contractor shall also provide competent project management personnel in addition and superior to the full-time on-Site superintendent who shall also have full authority to act for the Contractor at all times except such project management personnel cannot modify or rescind any action of the full-time on-Site superintendent directed to the Owner without the Owner's written consent.
- C. If at any time the supervisory staff is not satisfactory to the Owner, the Contractor shall, if directed in writing by the Owner, immediately replace such supervisory staff with other staff satisfactory to the Owner at no additional cost to the Owner.
- D. The Contractor shall remove from the Work any employee of the Contractor or of any Subcontractor when so directed in writing by the Owner.

Section 4.06 – Project Scheduling

- A. The Contractor shall provide a project scheduler, experienced in critical path method (CPM) scheduling. The scheduler's experience and credentials shall be submitted in writing to the Owner for

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review and acceptance prior to proceeding with scheduling of the Work. The Owner may withdraw its acceptance of the project scheduler at any time thereafter for failure to perform in accordance with the Contract. The Contractor shall provide a replacement scheduler and submit the replacement's experience and credentials in writing to the Owner for review and acceptance as soon as possible. The replacement scheduler shall be at no additional cost to the Owner.

- B. Using the software required by the Owner, the Contractor shall prepare, maintain, and revise the Project CPM schedule to plan and monitor the progress of all Project operations, in accordance with the Contract Documents. See the General Requirements for further details.
- C. Construction activities shall be interrelated on a single Project CPM schedule that represents the entire Project, including the entire Contract duration from Notice to Proceed to Substantial Completion and through Completion and Acceptance. The Contractor shall utilize the critical path method of network calculation to generate the Project CPM schedule and shall utilize the time-scaled precedence diagram method to show the Project CPM Schedule. The Project CPM Schedule shall utilize calendar days for the time scale. The Contractor shall ensure all logic constraints are identified between the Work of the Contract, the work of Other Contractors and Owner's work prior to approval of the Project CPM schedule. See the General Requirements for further details.
- D. The Owner may reject any proposed Project CPM schedule, any proposed updated Project CPM schedule or any proposed recovery Project CPM schedule if the Owner, in its sole and exclusive discretion, finds the proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule defective for any reason, including but not limited to:
 - 1. Defective logic;
 - 2. Excessive use of constraints;
 - 3. Activity durations that are inconsistent with actual or available workforce; or
 - 4. The appearance of an effort to manipulate the schedule so that responsibility for an adverse impact is associated with a natural person or entity other than the natural person or entity responsible for the adverse impact.
- E. If a proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule is rejected by the Owner, the Owner will notify the Contractor in writing of the rejection and the reason or reasons for the rejection. Contractor shall submit a new proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule with the defect or defects corrected at no cost to the Owner within two weeks of the Owner's written rejection.
- F. Review comments made by the Owner on the proposed Project CPM schedule, any proposed updated Project CPM schedule or any proposed recovery Project CPM schedule shall not relieve the Contractor from compliance with requirements of the Contract Documents. The Contractor shall be responsible for scheduling, sequencing, and performing the Work to comply with the requirements of the Contract Documents.
- G. The Contractor expressly understands and agrees that no additional compensation shall be paid for any alterations to Contractor's planned construction sequence to accommodate the Project CPM schedule

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requirements, any updated Project CPM schedule or any recovery Project CPM schedule pursuant to the Contract. Failure to include any element of work required for the performance of the Work shall not excuse the Contractor from completing all the Work required within the applicable completion date of each phase in the Contract Documents regardless of the Owner's approval of the Project CPM schedule, any updated Project CPM schedule or any recovery Project CPM schedule.

- H. The Owner may withhold payments if the Contractor fails to provide an acceptable project scheduler, replacement project scheduler, Project CPM schedule, updated Project CPM schedule, recovery Project CPM schedule or other schedule information or reports in accordance with requirements of the Contract.

Section 4.07 - Worker Identification and Site Access Control

- A. All employees of the Contractor and every Subcontractor shall comply with all site access control and security procedures prescribed by the Owner which may include, but are not limited to, the wearing of Owner issued identification badges, ingress and egress through controlled entry and exit points, and use of card readers or other electronic identity verification devices. Contractor cannot authorize any one to enter the Site, except Contractor's and Subcontractor's employees and persons delivering materials or equipment to Contractor or a Subcontractor, without the prior written consent of the Owner.
- B. All employees of the Contractor and every Subcontractor, prior to entering the Site for the first time, shall obtain an identification badge if issued by the Owner and produce to the Owner a valid form of government-issued photo identification and furnish other background information, including but not limited to the following:

- Full Name
- Last four (4) digits of Social Security Number
- Home Address (#/Street/Apt./City/Zip)
- Contractor/Subcontractor Name
- Job Classification
- Union Local Affiliation, if any

The Owner recognizes that certain information requested above constitutes personal information and will take all reasonable steps to ensure the security and confidentiality of this information as required by law.

- C. All employees of the Contractor and every Subcontractor shall visibly display on their person, while entering and on the Site, an identification badge if issued by the Owner. In the event said identification badge has not been issued by the Owner, all employees of the Contractor and every Subcontractor shall produce a valid form of government-issued photo identification promptly upon request of the Owner. Failure to display such identification or to produce such identification in the manner as prescribed by the Owner may result in the employee's non-admittance to or immediate removal from the Site. The Owner will send written confirmation to the Contractor confirming the action taken, if requested by the Contractor.

Section 4.08 - Related Work

- A. The Contractor should examine the Contract Documents for Work of its Contract and any related work of other contracts, to ascertain the relationship of its Work to any related work of other contracts.

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- B. The Owner may contract with a Design Professional, Construction Manager, or other Consultants to provide services to the Owner. The services enumerated in consultant contracts are for the benefit of the Owner who may choose to utilize any or all of said services. The Contractor has no privity of contract with the Design Professional, Construction Manager, or any other Consultant which contracts with the Owner and should not assume that all of the services enumerated in said contracts will be provided.
- C. The Contractor shall adhere to all of the requirements specified or communicated by the Design Professional in performing delegated design work required by the Contract Documents.

Section 4.09 – Coordination with Separate Contracts

- A. The Owner may award other contracts for work which may proceed simultaneously with the execution of the Work. The Contractor shall coordinate the Contractor's operations with those of Other Contractors as directed by the Owner. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.
- B. The Contractor shall take those steps reasonably necessary to keep itself informed of the progress and workmanship of Other Contractors and any subcontractors of Other Contractors and shall notify the Owner in writing immediately of lack of progress or defective workmanship on the part of Other Contractors or any subcontractors of Other Contractors, where said delay or defective workmanship may interfere with the Contractor's operations.
- C. Failure of a Contractor to keep so informed and failure to give written notice of lack of progress or defective workmanship by Other Contractors or any subcontractors of Other Contractors shall be construed as acceptance by the Contractor of said progress and workmanship as being satisfactory for proper coordination with the Work.
- D. Where the Contractor shall perform Work in close proximity to work of Other Contractors or any subcontractors of Other Contractors, or where there is evidence that Work of the Contractor may interfere with work of Other Contractors or any subcontractors of Other Contractors, the Contractor shall assist in arranging space conditions to make satisfactory adjustment for the performance of the Work. If the Contractor performs Work in a manner that causes interference with the work of Other Contractors or any subcontractors of Other Contractors, the Contractor shall make changes necessary to correct the condition at no additional cost to the Owner.
- E. The Contractor shall render any assistance which the Owner may require with respect to any claim or action in any way relating to the Work including, without limitation, review of claims, preparation of technical reports and participation in negotiations, without any additional compensation therefor.

Section 4.10 - Cooperation with Other Contractors

- A. During the performance of the Work, Other Contractors may be engaged in performing work. The Contractor shall coordinate the Contractor's Work with the work of said Other Contractors in such a manner as the Owner may direct.
- B. If the Owner determines that the Contractor is failing to coordinate the Work with the work of Other Contractors as the Owner has directed:
 - 1. The Owner shall have the right to withhold any payments due under the Contract until the Contractor complies with the Owner's direction; and

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2. The Contractor shall assume the defense and pay on behalf of the Owner any and all claims or judgments or damages and any costs to which the Owner may be subjected or which the Owner may suffer or incur by reason of the Contractor's failure to promptly comply with the Owner's directions, including, but not limited to attorney's fees, expert fees, and costs. Notwithstanding the foregoing, the Owner retains the right to select its own counsel for such defense, the cost of which is to be paid by the Contractor.
- C. If the Contractor notifies the Owner, in writing, that an Other Contractor on the Site is failing to coordinate its work with the Work, the Owner shall investigate the charge. If the Owner finds it to be true, the Owner shall promptly issue such directions to the Other Contractor with respect thereto as the situation may require. The Owner shall not be liable for any damages suffered by the Contractor by reason of the Other Contractor's failure to promptly comply with the directions so issued by the Owner, or by reason of an Other Contractor's default in performance.
- D. Should the Contractor sustain any damage through any act or omission of any Other Contractor having a contract with the Owner or through any act or omission of any subcontractor of said Other Contractor, the Contractor shall have no Claim against the Owner for said damage.
- E. Should any Other Contractor having or which shall have a contract with the Owner sustain damage through any act or omission of the Contractor or through any act or omission of a Subcontractor, the Contractor shall reimburse said Other Contractor for all said damages and shall indemnify and hold the Owner harmless from all such claims by said Other Contractor, including, but not limited to attorney's fees, expert fees, and costs. Notwithstanding the foregoing, the Owner retains the right to select its own counsel for such defense, the cost of which is to be paid by the Contractor. The Owner's right to indemnification hereunder shall in no way be diminished, waived, or discharged, by its recourse to assessment of liquidated damages as provided in the Contract Documents, or by the exercise of any other remedy provided by the Contract or law.
- F. The Owner cannot guarantee the responsibility, efficiency, unimpeded operations, or performance of any contractor. The Contractor acknowledges these conditions and shall bear the risk of all delays including, but not limited to, delays caused by the presence or operations of Other Contractors and subcontractors of Other Contractors and delays attendant upon any Project CPM schedule approved by the Owner and the Owner shall not incur any liability by reason of any delay.

ARTICLE 5 -- MATERIALS AND LABOR

Section 5.01 - Contractor's Obligations

- A. The Contractor shall, comply with all the terms of the Contract Documents and complete all the Work in a good worker like manner, within the time specified in the Contract and to the satisfaction of the Owner.
- B. The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, permits, insurance, temporary structures and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether incorporated or to be incorporated in the Work or not incorporated in the Work.

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- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- D. Any labor, materials or means whose employment, or utilization during the course of the Contract may tend to or in any way cause or result in strike, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor, its Subcontractors or material suppliers, or by any of the trades working in or about the Site, or by Other Contractors, their subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by the Contractor of this requirement may in the sole judgment of the Owner be considered a default by the Contractor under the Contract and a basis for the Owner to take action against the Contractor as set forth in General Conditions Article 11 – Termination or Suspension or such other action as the Owner may deem proper.
- E. The Contractor and each Subcontractor shall comply with all applicable local, state, and federal laws, rules and regulations and all applicable construction standards issued by the Joint Commission and other accrediting agencies and organizations.
- F. The Contractor and each Subcontractor shall comply with all applicable Hazardous Material Laws. The Contractor shall provide the Owner the Safety Data Sheets for any Hazardous Materials or hazardous substances brought on the Site by the Contractor or a Subcontractor at least fifteen (15) calendar days prior to the delivery of such materials to the Site. Contractor shall identify to Owner at least fifteen (15) calendar days in advance the quantities of all "Chemicals of Interest" listed under the Chemical Facility Anti-Terrorism Standards of the Homeland Security Appropriations Act of 2007 that will be brought onto the Site.
- G. Contractor shall provide the necessary information and training to its employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site and shall cause each of its Subcontractors to provide the necessary information and training to the Subcontractor's employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site. Upon request of the Owner, Contractor shall provide the Owner with proof, satisfactory to the Owner, that Contractor's employees and all Subcontractors' employees have received the necessary information and training.
- H. Contractor shall not transport, store or use, and shall prohibit Subcontractors from transporting, storing or using, any construction materials or equipment (whether or not totally enclosed) containing Hazardous Materials including, but not limited to, asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde in connection with this Contract; provided, however, Contractor and Subcontractors may transport, store and use the following substances: lead, natural gas, gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), grease(s), sealant(s), combustible gases, form oil(s), solvent(s), adhesives, paints, coatings, and all other materials that are used or consumed in or during construction or testing of the Work and its constituent systems and components in quantities reasonably necessary to perform the Work, if transported, stored and used in accordance with applicable laws including, but not limited to, those laws related to the implementation and utilization of spill containment, transport systems and storage vessels and facilities.
- I. Any Hazardous Materials and hazardous substances brought to or stored on or at the Site shall require specific, prior written authorization from Owner and, as a condition to such authorization, Contractor shall provide Owner with the Material Safety Data Sheet covering any Hazardous Material or hazardous substance furnished under or otherwise associated with the Work (including the construction equipment). Contractor shall maintain on the Site, at all times, complete records, and inventories, including Safety Data Sheets, of Hazardous Materials and hazardous substances described in this

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General Conditions Section 5.01 that are being used by it or its Subcontractors, or any persons for whose actions on the Site Contractor is responsible.

Section 5.02 - Means and Methods of Construction

- A. Unless otherwise provided in the Contract Documents, the Contractor shall choose the Means and Methods of Construction subject to the Owner's right to reject, at any time, the Means and Methods of Construction proposed by the Contractor, which in the opinion of the Owner:
1. Will constitute or create a hazard to the Work or to persons or property;
 2. Will not produce finished Work in accordance with the terms of the Contract;
 3. Will be detrimental to the overall progress of the Project; or
 4. Will have an adverse impact on the operations of the Client.
- B. The Owner's failure to exercise its right to reject the Contractor's Means and Methods of Construction shall not relieve the Contractor of its obligation to complete the Work; the Owner's exercise of its right to reject the Contractor's Means and Methods of Construction shall not create a Contractor's or Subcontractor's cause of action for damages against the Owner.

Section 5.03 - Contractor's Title to Materials

- A. No materials for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by any other party. The Contractor warrants that the Contractor has full, good, and clear title to all materials used by the Contractor in the Work, or resold to the Owner pursuant to the Contract Documents free from all liens, claims or encumbrances.
- B. For all materials and equipment to be stored at a location other than the Site prior to execution of an agreement with the Owner for materials stored off-site pursuant to General Conditions Section 8.01 G, the Contractor shall provide the Owner with written notice of the location, security, environmental protections and the materials or equipment to be stored at that location at least fifteen (15) calendar days before such storage begins. Such notice does not obligate the Owner to pay for such stored material or equipment. Payment for stored material or equipment can be made only when the requirements for such payment in General Conditions Article 8 - Payment and elsewhere in the Contract have been met.
- C. All materials, equipment and articles which become the property of the Owner shall be new unless specifically stated otherwise.

Section 5.04 - Comparable Products ("Or Equal" Clause)

- A. Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which performs satisfactorily the duties imposed by the design intent may be considered equally acceptable provided that, in the opinion of the Design Professional, the material, article, or equipment so proposed is of equal quality, substance and function and the Contractor shall not Provide, Furnish or Install any said proposed material, article, or equipment without the prior

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written approval of the Design Professional. The burden of proof and all costs related thereto concerning the "or equal" nature of the substitute item, whether approved or disapproved, shall be borne by the Contractor.

- B. Any costs savings to an approved comparable product realized by the Contractor shall be shared equally between the Owner (50%) and Contractor (50%).
- C. Where the Design Professional, pursuant to the provisions of this General Conditions Section 5.04, approves in writing a product proposed by the Contractor and said proposed product requires a revision of the Work covered by this Contract, or the work covered by other contracts, all changes in the work of all contracts, revision or redesign, and all new Drawings and details required therefore shall be provided by the Contractor at its cost and shall be subject to the approval of the Design Professional.
- D. No substitution which may result in a delay to the Project will be permitted without the prior written approval of the Owner.

Section 5.05 - Quality, Quantity and Labeling

- A. The Contractor shall Furnish materials and equipment of the quality and quantity specified in the Contract.
- B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards. Contractor's quality control plan required by paragraph D of this General Conditions Section 5.05 shall include measures undertaken by the Contractor to prevent the use of materials with counterfeit labels or other counterfeit indications of meeting a standard.
- C. The above requirements shall not restrict or affect the Owner's right to test materials as provided in the Contract.
- D. The Contractor shall develop and implement quality control plans to assure itself and the Owner that all Work performed by the Contractor and its Subcontractors complies fully with all Contract requirements, and shall submit the plans to the Owner as required by the Contract. See the Submittals Section of the General Requirements for further details. The Contractor's quality control plans shall be independent of any testing or inspection performed by or on behalf of the Owner.

Section 5.06 - Tax Exemption

- A. The Owner is exempt from payment of federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated in to the completed Work. These taxes are not to be included in bids. This exception does not apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated in to the completed Work, and the Contractor and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.
- B. The Contractor and Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule, or regulation.

ARTICLE 6 -- SUBCONTRACTS

Section 6.01 - Subcontracting

- A. The Contractor may utilize the services of Subcontractors, subject to the limits prescribed in the Information for Bidders Section 7.0 – Approval of Subcontractors/Subcontract Limits. Exceeding stated limits, without prior written approval by the Owner, may be cause for Contract termination.
- B. The Contractor shall submit to the Owner the name of each proposed Subcontractor as required by the Contract. The Owner reserves the right to disapprove any proposed Subcontractor and such disapproval shall not result in any additional cost to the Owner. If requested by the Owner, the Contractor shall provide copies of any and all Subcontracts and purchase order agreements related to the Work. The Contractor shall require each Subcontractor to provide the Owner, upon the Owner's request, with a copy of each of the Subcontractor's subcontracts and purchase order agreements related to the Work.
- C. The Contractor's use of Subcontractors shall not diminish the Contractor's obligation to complete the Work. The Contractor shall control and coordinate the Work of Subcontractors and be fully responsible for the acts and omissions of Subcontractors, and of persons either directly or indirectly employed by Subcontractors. The Contractor shall be responsible for all guarantees and warranties provided by Subcontractors.
- D. The Contractor shall be responsible for requiring each Subcontractor, to extent of the Work to be performed by such Subcontractor, to be bound to the Contractor by all the terms, conditions, and requirements of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. The Contractor shall cause each Subcontractor to receive and review the provisions of the Contract Documents applicable to the Subcontractor, including but not limited to a copy of the Payment Bond for this Contract. Upon request of the Owner, the Contractor shall provide written proof satisfactory to the Owner that each Subcontractor has received and reviewed the provisions of the Contract Documents applicable to such Subcontractor, including but not limited to, a copy of the Payment Bond for this Contract.
- E. The Contractor shall ensure that each Subcontractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client, are, to the fullest extent permitted by law, at least the same as the Contractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client.
- F. To the fullest extent permitted by law and independent of any duty to indemnify and hold harmless, the Contractor shall require each Subcontractor, to the fullest extent permitted by law, to defend the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Subcontractor's operations or presence at, or in the vicinity of, the Site.
- G. To the fullest extent permitted by law, the Contractor shall require each Subcontractor, to the fullest extent permitted by law, to indemnify and hold harmless the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the

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Work, or out of or in connection with the Subcontractor's operations or presence at, or in the vicinity of, the Site.

- H. The Contractor shall require each Subcontractor, in addition to the Subcontractor's other obligations, to pay the costs of the Owner and Client, including but not limited to, attorneys' and consultants' fees, expenses and court costs, to commence and prosecute a court action against the Subcontractor to enforce one or more of the Subcontractor's obligations under General Conditions Section 6.01 E, F or G or against an insurance company to obtain coverage under an insurance policy which the Subcontractor represented would provide coverage to the Owner or Client.
- I. Nothing contained in the Contract or any subcontract shall create any contractual relationship between any Subcontractor and the Owner except the requirements in General Conditions Sections 15.03 and 15.04 for each Subcontractor to procure insurance policies on which the Owner or the Owner and Client are insureds, the obligations of each Subcontractor pursuant to General Conditions Section 6.01 E, F and G to defend, indemnify and hold harmless, to the fullest extent permitted by law, the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever and the obligation of each Subcontractor pursuant to General Conditions Section 6.01 H.
- J. In selecting a Subcontractor, the Contractor shall consider whether the proposed Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The Contractor shall not subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The Contractor shall not subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law.
- K. Prior to or after award of the Contract, if requested by the Owner, the Contractor shall require a Subcontractor to submit a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire. If requested by the Owner, the Contractor shall require a Subcontractor to update a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire previously submitted to the Owner.
- L. The Contractor shall submit a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire to the Owner for each Subcontractor proposed for the Work with a subcontract value of two million dollars (\$2,000,000) or greater. Refer to General Conditions Article 19 – Executive Order No. 125.
- M. After execution of the Contract, the Owner will provide to the Contractor copies of the Owner's Code of Business Ethics Certification form. The Contractor is required to have each Subcontractor, at all tiers, complete the form prior to the Subcontractor beginning work. The completed forms are to be filed by the Contractor with the Owner. A failure to comply with this requirement may result in the Subcontractor(s) being removed from the Project Site.

ARTICLE 7 -- CHANGES IN THE WORK

Section 7.01 - Changes

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- A. Without invalidating the Contract, the Owner, in writing, may order changes in the Work by altering, adding to, or deducting from the Work of the Contract.
1. No change in the Work is effective unless the Owner executes and delivers a Change Order to the Contractor. No payment for a change in the Work is due the Contractor unless and until a Change Order is executed and delivered by the Owner to the Contractor and the Contractor has performed the change in the Work. No alteration to the standard language of the Owner's Change Order form shall be accepted. If the Contractor requests an adjustment to the Substantial Completion date for a change in the Work and the Owner agrees, an increase or decrease to the duration, in calendar days, shall be included in the Change Order.
 2. Notwithstanding subparagraph 1, the Owner, at its discretion, may execute and deliver to the Contractor a Notice to Proceed directing the Contractor to proceed immediately and diligently with the change in the Work described in the Notice to Proceed. The Owner, upon execution and delivery of the Notice to Proceed to the Contractor, is obligated to adjust the Contract for the change in the Work described in the Notice to Proceed; the extent of the adjustment(s) will be determined using the method of General Conditions Section 7.01 B specified in the Notice to Proceed, this General Conditions Article and negotiations with the Contractor; the adjustment(s) will be stated in the Change Order to be executed and delivered by the Owner to the Contractor. The Contractor, upon receipt of the Notice to Proceed, is obligated to proceed immediately and diligently with the change in the Work described in the Notice to Proceed while the adjustment(s) are determined. The Notice to Proceed shall be processed through the Project Management Program prior to execution and delivery by the Owner to the Contractor. No alteration to the standard language of the Owner's Notice to Proceed form shall be accepted. No payment for the change in the Work is due the Contractor until the Change Order is executed and delivered by the Owner to the Contractor and the Contractor has performed the change in the Work. The Owner determines the duration between execution and delivery of the Notice to Proceed and execution and delivery of the Change Order.
 3. Contractor's failure to proceed immediately and diligently with any Notice to Proceed or Change Order executed and delivered by the Owner to the Contractor, unless the Owner in writing directs otherwise, shall be a material breach of the Contract.
 4. If, after the Owner has executed and delivered a Notice to Proceed to the Contractor for a change in the Work, the Owner and the Contractor cannot agree on the adjustment(s) to the Contract for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Contractor in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Contractor does not accept the Forced Change Order, the Contractor shall strictly comply with the requirements of General Conditions Section 7.01 D.
 5. No Change Order is executed by the Owner unless and until the Change Order is processed through the Project Management Program and:
 - a. For a Change Order for an amount less than \$5,000, the regional project manager, the chief project manager, or the director – construction, for the Project signs the Change Order;
 - b. For a Change Order for an amount of \$5,000 to \$150,000, the director - construction administration, the chief - project controls, or the senior managing director – construction signs the Change Order; and

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- c. For a Change Order for more than \$150,000, the managing director - construction or other authorized officer of Owner signs the Change Order;
 - d. Notwithstanding the preceding provisions of this subparagraph, a Change Order which modifies the date for Substantial Completion and has a monetary amount less than \$5,000 shall be executed as a Change Order of \$5,000 to \$150,000.
 - e. No Change Order delivered to the Contractor is valid unless the Change Order has been executed in accordance with this subparagraph. The Owner, by written notice to the Contractor, may add or delete employees from the list of employees authorized to sign for the Owner a category of Change Orders and may limit an employee's authorization to sign a Change Order to part of a category. Notwithstanding any other provision of the Contract, the written notice adding an employee to the list of employees authorized to sign for the Owner a category of Change Orders and the written notice limiting an employee's authorization to part of a category may be put on one or more Change Orders for the Contract.
- B. The Contract amount may be increased or decreased only by a Change Order and the amount of the adjustment is determined by one or more of the following methods, as determined by the Owner:
1. By applying the applicable unit price or prices contained in the Contract Documents, or negotiated pursuant to the provisions of this General Conditions Article. Unit prices are limited to the quantities specified in the Contract Documents or prior Change Order. Unit prices for quantities greater than specified in the Contract Documents or prior Change Order may, in the Owner's sole and exclusive discretion, be subject to negotiations between the Owner and Contractor.
 2. By estimating the fair and reasonable cost of the change in the Work or deleted Work.
 3. By determining the actual cost of the change in the Work and considering the following:
 - a. Labor, including all wages and required wage supplements, paid to employees below the rank of superintendent directly employed at the Site for the change in the Work. Minimum wages are the prevailing rate of wages defined by the NYS Department of Labor. Actual wages in excess, paid by the Contractor, may be considered by the Owner.
 - b. Premiums or taxes paid by the Contractor for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.
 - c. Materials associated with the change in the Work.
 - d. Equipment, excluding hand tools, which in the judgment of the Owner, would have been or will be employed in the Work. The Owner may employ the use of rental rates it deems most appropriate from the information in the "Equipment Watch Retail Rental and Equipment Watch Cost Recovery" databases. In no case will the equipment rental cost exceed the purchase price of the equipment. Self-owned equipment is defined to include equipment rented from Contractor-controlled or affiliated companies. It is the duty of the Contractor to utilize either rented or self-owned equipment that is of a nature and size appropriate for the Work to be performed. The Owner reserves the right to determine reasonable and appropriate equipment sizing, and at the Owner's discretion, it may adjust the costs allowed to reflect a smaller or less elaborate piece of equipment more suitable for performance of the change in the Work. The

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Owner, in its sole and exclusive discretion, will determine if equipment is rented from a company controlled by or affiliated with the Contractor.

- e. To determine the daily and hourly rate of self-owned equipment, the monthly rate shall be divided by twenty-two (22) to establish a daily rate; or by one hundred and seventy-six (176) to establish the hourly rate. The operating cost listed in the "Equipment Watch Retail Rental and Equipment Watch Cost Recovery" databases would be added to this rate to establish the billable rate.
- C. For each change in the Work, the Contractor shall submit to the Owner, within the time period provided by the Owner, the following information:
1. A detailed proposal of labor, material, and equipment costs for the change in the Work. The Contractor and Subcontractors shall use the Owner's Contractor and Subcontractor Change Order Proposal Forms, which are available directly from the Owner or from the Dormitory Authority's website <http://www.dasny.org>.
 2. The Contractor's and Subcontractor's proposals shall provide a notarized statement as follows:

"I hereby certify that the value for the labor, material and equipment that comprise the proposal, represents the value of said work, material and equipment for the work performed or to be performed, pursuant to the Contract between the undersigned and the Dormitory Authority and that no overhead or profit is included in the proposal for a change to the Work performed by any Subcontractor or for any major equipment or material supplier that is a subsidiary or an affiliate of this firm."
 3. Signed and notarized Labor Rate Worksheet to determine hourly rates for each classification of worker associated with the change in the Work. The Contractor shall use the Owner's Labor Rate Worksheets, which are available directly from the Owner or from the Dormitory Authority's website <http://www.dasny.org>. Only hourly rates for each classification of worker approved by the Owner can be used to determine the adjustment of the Contract amount for a Change Order. Only an authorized officer of Owner or authorized employee of Owner's Project Controls Unit can approve Labor Rate Worksheets.
 4. Narrative and fragnet schedule, which describes the impact on the Project CPM schedule in calendar days associated with the change in the Work if the Contractor requests a change in the date to achieve Substantial Completion. Owner, in its sole and exclusive discretion, may waive, in writing, this requirement for requests to change the date to achieve Substantial Completion made prior to the Owner's approval of the initial Project CPM schedule. Owner's waiver of this requirement can be made only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit. If the Contractor does not submit a narrative and fragnet schedule, the Contractor acknowledges that the Change Order does not require a change in the date to achieve Substantial Completion.
 5. The Contractor agrees to provide, at the Owner's request, any additional documentation to further verify labor, material, equipment, and any other cost sought for a change in the Work.
 6. The Contractor agrees to provide, at the Owner's request, written justification for a change in the Work.

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- D. Each Contractor's written change proposal shall be reviewed by the Owner consistent with the requirements of the Contract.
1. Owner and Contractor shall negotiate in good faith to agree on the adjustment(s) to the Contract for each change in the Work. The Owner is not required to respond to any change proposal submitted by the Contractor until the Contractor submits a change proposal that complies with the Contract Documents. Negotiations under this General Conditions Article shall not impact the Project schedule. The Contractor's proposal for a change in the Work is approved and accepted by the Owner only by the Owner's execution and delivery of a Change Order to the Contractor. See General Conditions Section 7.01 A. 5 for the requirements of execution and delivery.
 2. If the Owner has executed and delivered a Notice to Proceed to the Contractor for a change in the Work and the Owner and the Contractor cannot agree on the adjustment(s) to the Contract for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Contractor in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Contractor does not accept the Forced Change Order, the Contractor shall file a notice of Claim in strict accordance with General Conditions Section 10.03 and comply strictly with all requirements of General Conditions Sections 10.03, 10.05 and 10.06. The Contractor's failure to comply with any or all of General Conditions Sections 10.03, 10.05 and 10.06 shall be deemed to be:
 - a. a conclusive and binding determination on the part of the Contractor to accept the Forced Change Order as final, binding and conclusive on the Contractor; and
 - b. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the Forced Change Order.
- E. Any information representing the value of the Work performed, materials supplied and equipment utilized contained in the Contractor's and Subcontractor's proposals that constitutes False Representation may subject the Contractor or Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
- F. The compensation specified in the Change Order executed by the Owner and delivered to the Contractor includes full compensation for the changes in the Work covered thereby, and the Contractor waives all rights to any other compensation, damages, or expenses for the changes in the Work described therein.
- G. The Contractor shall furnish satisfactory bills, certified payrolls, vouchers, and other cost documentation covering all items of cost and when requested by the Owner shall give the Owner access to all accounts and records relating thereto, including records of Subcontractors and material suppliers.
- H. At Substantial Completion, the Owner may address increased Project-specific bonding, liability insurance and builder's risk insurance costs which may have resulted from changes in the Work. The Contractor shall provide satisfactory proof of and paid invoices, including cancelled checks or bank statements showing payment, for such increased costs. The Owner will not pay overhead and profit on any increased costs for bonding, liability insurance or builder's risk insurance.

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- I. General Conditions Section 10.01 applies when the Owner determines that a decision, response, direction, action, omission, or condition does not require performance of Extra Work.

Section 7.02 - Overhead and Profit

- A. See Example A for changes in the Work performed directly by the Contractor, whether a base cost is arrived at by estimated cost or actual cost method; add to base cost a sum equal to twenty percent. See Exceptions - Paragraphs "D" and "E".

Example A:

Contractor base cost	\$1,000
20% overhead and profit	<u>200</u>
Total	\$1,200

- B. See Example B for changes in the Work performed by a Subcontractor under contract with the Contractor, where estimated or actual cost is Ten Thousand Dollars (\$10,000.00) or less; add to the base cost a sum equal to twenty percent of cost, for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to ten percent of the Subcontractor's base cost.

Example B:

Subcontractor base cost	\$1,000
20% Subcontractor overhead and profit	<u>200</u>
Subcontractor Total	\$1,200
10% Contractor overhead and profit on base cost	<u>100</u>
Total	\$1,300

- C. See Example C for changes in the Work performed by a Subcontractor, under contract with the Contractor, which exceeds a base cost of Ten Thousand Dollars (\$10,000) in estimated or actual cost; add to the base cost a sum equal to twenty percent of cost for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to ten percent of the first Ten Thousand Dollars (\$10,000) of the Subcontractor's base cost, plus five percent of the next Ninety Thousand Dollars (\$90,000) of the Subcontractor's base cost, plus three percent of any sum in excess of One Hundred Thousand Dollars (\$100,000) of the Subcontractor's base cost.

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Example C:

Subcontractor base cost	\$200,000
20% Subcontractor overhead and profit	<u>40,000</u>
Subcontractor Total	\$240,000
10% Contractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Total	\$248,500

- D. See Example D for overhead and profit on major equipment such as: switchgear, transformers, air handling units, boilers, etc. For extra equipment purchases by the Contractor or Subcontractors which exceeds a base cost of Ten Thousand dollars (\$10,000) in estimated or actual cost; add to the base cost for the benefit of the Contractor a sum equal to ten percent of the first Ten Thousand dollars (\$10,000) of the vendor's base cost plus five percent of the next Ninety Thousand dollars (\$90,000) of the vendor's base cost, plus three percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the vendor's base cost. If the equipment is supplied by the Subcontractor, the Contractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the base cost.

Example D:

Vendor base cost	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500
10% Contractor overhead and profit on first \$10,000 base cost when equipment is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

- E. See Example E for overhead and profit on a material only Change Order. For increased material purchases by the Contractor or Subcontractors which exceed a base cost of Ten Thousand dollars (\$10,000) in estimated or actual costs; add to the base cost for the benefit of the Contractor a sum equal to ten percent of the first Ten Thousand dollars (\$10,000) of the supplier's cost plus five percent of the next Ninety Thousand dollars (\$90,000) of the supplier's cost, plus three percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the supplier's cost. If the material is supplied by the Subcontractor, the Contractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the base cost.

Example E:

Material cost (net difference between original contract and revised)	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500
10% Contractor overhead and profit on first \$10,000 base cost when material is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

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- F. Other than the overhead and profit described in General Conditions Section 7.02A, no further overhead and profit will be allowed for changes to the Work performed by a Subcontractor under Subcontract with the Contractor or for major equipment or material supplier determined to be an affiliate of or controlled by the Contractor. An affiliate is considered any firm or entity in which the Contractor or any individual listed on the Contractor's NYS Vendor Responsibility Questionnaire either owns 5% or more of the shares of, or is one of the five largest shareholders, a director, officer, member, partner or proprietor of said Subcontractor, major equipment or material supplier; a controlled firm is any firm or entity which, in the opinion of the Owner, is controlled by the Contractor or any individual listed on the Contractor's NYS Vendor Responsibility Questionnaire.
1. The Owner, in its sole and exclusive discretion, will determine if a firm or entity is an affiliate of or controlled by the Contractor.
- G. No overhead and profit shall be paid for changes in the Work performed by a Subcontractor not under Subcontract with the Contractor. No overhead and profit shall be paid on the premium portion of overtime pay. Where the changes in the Work involve both an increase and a reduction in similar or related Work, the overhead and profit allowance shall be applied only to the cost of the increase that exceeds the cost of the reduction.

Section 7.03 - Deduct Change Order

The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a decrease in the Contract amount shall be as determined by the Owner. The credit shall include the overhead and profit allocable to the deleted or changed Work unless the Owner, in its sole and exclusive discretion, determines otherwise.

ARTICLE 8 -- PAYMENT

Section 8.01 - Provision for Payment

- A. The Contractor shall complete and submit to the Owner for review and written approval, the detailed Schedule of Values prior to the Contractor's first billing request. It is understood, and the Contractor acknowledges, that the Schedule of Values is an administrative tool to illustrate a format and minimum level of detail required for billing requests, and shall not be considered as delineating the Contractor's scope of Work. The Owner may require the Contractor to revise its Schedule of Values at no cost to the Owner and to provide a greater level of detail. Further, the Owner reserves the right to accept only those cost distributions which, in the Owner's opinion, are reasonable, equitably balanced and correspond to the estimated quantities in or for the Contract Documents. Owner's approval of the Schedule of Values can be provided only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit.

The Contractor, at its own expense, shall take all actions necessary to fully comply with the requirements of the Statewide Utilization Management Plan ("SUMP") of the NYS Contract System. Contractor shall require all Subcontractors to comply with the requirements of SUMP and the NYS Contract System. These requirements include, but are not limited to, the Contractor's timely payment to all Subcontractors and timely input in to the NYS Contract System of information, including but not limited to, information regarding Subcontractor payments and compliance with Contract requirements, including but not limited to Contract requirements for participation of Minority and Women Owned Business Enterprises in the performance of the Contract.

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- B. The Owner shall not approve any billing request until:
1. the Contractor is in full compliance with SUMP and the NYS Contract System; and
 2. the Owner approves the Schedule of Values in writing.
- C. To request a partial or full payment for partial or full performance of the Contract, Contractor shall obtain from the Owner a Contractor's billing request. The Contractor shall complete the billing request by entering in each line item thereof the percentage of completion of that item as of the end of the preceding business month and deliver the completed billing request to the Owner. The Owner shall review the billing request and make any changes which the Owner, in its sole and exclusive discretion, determines to be necessary so that the percentage of completion for each line item in the billing request accurately reflects the Contractor's performance of the Contract as of the end of the preceding business month. The Owner then delivers the Owner's adjusted version of the billing request to the Contractor for execution by the Contractor of the certifications of the Contractor required for partial or full payment for partial or full performance of the Contract. The Contractor delivers the executed billing request to the Owner. Any partial payment request under the Contract shall be at least thirty (30) calendar days after the preceding partial payment request under the Contract, unless the Owner in writing signed by an authorized officer permits more frequent requests.
- D. The Owner may make a partial payment to the Contractor for partial performance of the Contract on the basis of an Application for Payment for the Work performed during the preceding business month. The Owner shall retain five percent (5%) of the amount of each said Application for Payment. The Owner may make full payment to the Contractor for full performance of the Contract on the basis of an Application for Payment. Each Application for Payment shall be accompanied by all documentation required by law, including but not limited to, certified payrolls and all documentation required by the Owner, including but not limited to documentation to establish compliance with NYS Labor Law and NYS Lien Law. The Owner may require any documentation the Owner determines is necessary or useful to establish that the Contractor's performance of the Work complies with the requirements of the Contract and applicable law.
- E. Any partial payment made shall not be construed as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract. No payment, either partial or full, by the Owner to the Contractor shall waive or excuse any failure by the Contractor to comply fully with the Contract Documents. No payment will be made for Work not performed.
- F. In preparing the Contractor's billing request, material delivered to the Site and properly stored and secured at the Site and material approved to be stored off-site under such conditions as the Owner shall prescribe in accordance with paragraph G of this General Conditions Section 8.01, may be taken in to consideration. All costs related to the storage of materials are the sole responsibility of the Contractor.
- G. The Owner will provide an agreement for materials stored off-site and specific forms that the Contractor shall complete, execute, and submit with any billing request for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases of liens, and inventory. The Owner, in its sole and exclusive discretion, may require the Contractor to certify in the agreement for materials stored off-site that the materials comply with one or more requirements of the

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Contract or to provide documentary proof acceptable to the Owner that the materials comply with one or more requirements of the Contract.

- H. All monthly billing requests submitted by the Contractor shall only be in the form and manner approved by the Owner. The Contractor shall furnish such affidavits, vouchers, receipts, and other documentation as to delivery and payment for materials, payment of Subcontractors, and payment of prevailing rate of wage and supplements required by NYS Labor Law as the Owner requires to substantiate each and every billing request. Contractor shall furnish any other documentation required by Owner to establish compliance with one or more requirements of the Contract or any statute or regulation, including but not limited to the certification required by General Conditions Section 16.02 and proof of compliance with NYS Labor Law Section 220-h (See General Conditions Section 16.03 H).
- I. All payments received by the Contractor under or in connection with the Contract are trust funds under Article 3-A of the NYS Lien Law and shall be applied by the Contractor in accordance with such law.

Section 8.02 - Substantial Completion and Reduction of Retainage

- A. After the Owner has determined Substantial Completion of the Work, as evidenced by the executed Notice of Substantial Completion, the Owner shall pay to the Contractor the balance due the Contractor pursuant to the Contract less:
 - 1. Two (2) times the value of any remaining items of Work to be completed or corrected as determined in accordance with paragraph B. of this General Conditions Section 8.02.
 - 2. An amount necessary to satisfy any and all claims, liens, or judgments by the Owner or third parties against the Contractor.
- B. After the Owner has determined Substantial Completion of the Work, as evidenced by the executed Notice of Substantial Completion, the Contractor shall submit to the Owner, for Owner's written approval, a detailed estimate of the value of the known remaining items of Work as set forth by the Owner and a schedule for achieving Physical Completion and Completion and Acceptance of the Work. The Owner shall review that estimate and schedule and:
 - 1. Direct the Contractor to revise and resubmit the estimate, the schedule or both; or
 - 2. Approve the estimate and schedule.

The Owner, at its discretion, may value the items of Work to be completed or corrected assuming such items will be completed or corrected by an entity other than the Contractor and may include the cost of obtaining regulatory or other third-party approval of one or more items of Work.
- C. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to a duly completed and submitted Application for Payment.
- D. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to this General Conditions Section 8.02.
- E. The Contractor may request from the Owner a reduction of retainage when a phase of the Work is accepted by the Owner but Owner is not obligated to grant such request.

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- F. The Application for Payment for the first payment of reduction of retainage shall be accompanied by:
1. A release by the Contractor to the Owner of all Claims by and all liability to the Contractor for all items in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work; or
 2. A release by the Contractor to the Owner of all Claims by and all liability to the Contractor for all items in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work, excepting and reserving to the Contractor those Claims specified by the Contractor in the release. Owner's acceptance of a release containing Claims specified by and reserved to the Contractor does not waive any rights of the Owner arising under the Contract or any other source with respect to such Claims.

The requirement of a release may be waived only in writing and only by the Owner's Office of Counsel. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment bonds.

Section 8.03 - Release and Consent of Surety

Notwithstanding any other provision of the Contract Documents to the contrary, reduction of retainage and/or the final Application for Payment shall not become due until the Contractor submits to the Owner a General Release from the Contractor and, if the Owner requests, a Consent of Surety to said payment in form and content acceptable to the Owner. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment bonds.

Section 8.04 - Liens

- A. Upon the Owner's receipt of a notice of public improvement lien, all, or a portion, of the amounts due in the current and subsequent payments due the Contractor shall be withheld until a sum which shall be one and one-half (1 1/2) times the amount stated to be due in the notice of public improvement lien shall have been withheld from payments due the Contractor. This sum shall be withheld until the lien is discharged. The Contractor shall promptly discharge any notice of public improvement lien by filing a bond pursuant to NYS Lien Law Section 21, subdivision 5. If any Subcontractor should file a notice of lien against the property upon which the Project is located, such lien is void and Contractor, at its expense shall obtain and file an order of the Supreme Court of the State of New York cancelling such lien. If Contractor shall fail to obtain such order or if Contractor shall file a notice of lien against the property upon which the Project is located, the Owner may obtain an order of the Supreme Court of the State of New York cancelling such lien and deduct the attorney's fees and other costs incurred in obtaining and filing such order from any amount due the Contractor.
- B. Upon receipt of any other lien, levy, notice to withhold, restraining notice, court or administrative order or any other instrument allowed by law and directing the Owner to withhold payments due Contractor, the Owner will withhold the sum which Owner determines is necessary to withhold to comply with the applicable law. This sum shall be withheld until the instrument is, in the Owner's sole and exclusive discretion, appropriately satisfied or discharged.

Section 8.05 - Withholding of Payments

- A. The Owner may withhold from the Contractor any part of any payment as may, in the judgment of the Owner, be necessary:

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1. To ensure payment of just claims of any natural person or entity supplying labor, materials, or equipment for the Work.
 2. To protect the Owner from loss due to defective Work not remedied.
 3. To protect the Owner, Client, or any Consultant from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of Other Contractors, Subcontractors or others caused by the act or neglect of the Contractor or Subcontractors.
 4. To ensure payment of fines and penalties, that may be imposed on the Contractor pursuant to the provisions of the Contract.
 5. To ensure payment of fines, penalties, or damages that may be imposed on the Contractor pursuant to General Conditions Article 20 - Opportunity Programs.
 6. To protect and make whole the Owner from a Contractor's non-compliance to the requirements set forth in General Conditions Article 14 – Protection of Persons and Property and Article 15 – Insurance and Bonds.
 7. To protect the Owner and Client from damage caused or claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work of the Contract in strict accordance with the Contract Documents.
- B. The Owner shall have the right to apply any such amounts so withheld in such a manner as the Owner may deem proper to satisfy said claims, fines, and penalties, or to secure said protection. Said application of the money shall be deemed payments for the account of the Contractor.

Section 8.06 - Late Payment

Timeliness of payment and any interest to be paid to the Contractor for late payment is governed by Section 2880 of the NYS Public Authorities Law. Timely payment by the Contractor to the Subcontractor is governed by Section 139-f of the NYS State Finance Law which requires payment by the Contractor to the Subcontractor within seven (7) calendar days of receipt of payment from the Owner.

Section 8.07 – False Representations/Information

- A. False Representations, information, or data submitted on or with Applications for Payment may result in one or more of the following actions:
1. Termination of the Contract for cause;
 2. Disapproval of future bids or contracts or subcontracts;
 3. Withholding of final payment on the Contract; and
 4. Civil and/or criminal prosecution (See General Conditions Sections 7.01 E and 10.03 F).
- B. The provisions of this General Conditions Section 8.07 are solely for the benefit of the Owner, and any action or non-action hereunder by the Owner shall not give rise to any liability on the part of the Owner.

ARTICLE 9 -- TIME OF COMPLETION

Section 9.01 - Substantial Completion

- A. The Contractor shall commence performance of the Work at the time stated in the Notice to Proceed and the Contractor shall achieve Substantial Completion no later than the date for Substantial Completion specified in the Contract. Notwithstanding anything to the contrary, a schedule submitted by the Contractor showing Substantial Completion earlier than that specified in the Contract shall not entitle the Contractor to any additional cost in the event the earlier date is not realized.
- B. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that Substantial Completion of the Work on or before the date for Substantial Completion specified in the Contract, is an essential condition of the Contract.
- C. The Contractor agrees that the Work shall be prosecuted regularly, diligently, and cooperatively with Other Contractors at such rate of progress as shall ensure Substantial Completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time to achieve Substantial Completion allowed herein is reasonable.
- D. It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for Substantial Completion of the Work, the new date of Substantial Completion established by said extension shall be of the essence. The Contractor shall not be charged with liquidated damages or any excess cost of the Owner or Client if the Owner determines in its sole and exclusive discretion that the Contractor is without fault and that the delay in Substantial Completion of the Work is due:
1. To any preference, priority or allocation order duly issued by the Government of the United States or the State of New York.
 2. To an unforeseeable cause beyond the control and without the fault of, or negligence of the Contractor, and approved by the Owner, including, but not limited to, acts of God or of public enemy, acts of the Owner, fires, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
 3. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in Subsections 1 and 2 of this paragraph provided the Contractor shall, within fifteen (15) calendar days from the beginning of any such delay, notify the Owner in writing of the causes of the delay. Notice shall be delivered to the Owner as specified in General Conditions Section 10.03 C.
- E. The date of Substantial Completion may be modified only by a Change Order.
- F. If the Contractor shall neglect, fail, or refuse to achieve Substantial Completion by the date specified, or any proper extension thereof granted by the Owner, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day thereafter that the Contractor does not achieve Substantial Completion.
- G. If the Contractor shall abandon performance of the Work before achieving Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day

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after both the date of abandonment and the date specified for Substantial Completion that the Work has not achieved Substantial Completion. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.

- H. If the Owner terminates the Contract before the Contractor achieves Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of termination of the Contract and the date specified for Substantial Completion that the Work has not achieved Substantial Completion. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.
- I. Said amount of liquidated damages is agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the Owner would sustain for loss of beneficial use of the Work of the Contract in the event of delay in Substantial Completion, abandonment of the Work by the Contractor or termination of the Contract pursuant to General Conditions Section 11.01, and said amount is agreed to be the amount of damages sustained by the Owner and said amount may be retained from time to time by the Owner.
- J. The foregoing liquidated damages are intended to compensate the Owner only for the loss of beneficial use of the Work of the Contract. In addition, the Contractor shall be liable to the Owner and the Client, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Owner or Client may incur as a result of any actions or inactions of the Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to Other Contractors working on the Project or other third parties, job extension costs, and other losses incurred by the Owner or Client. The provisions of this paragraph are for the exclusive use of the Owner and Client, and shall not accrue to Other Contractors or other third parties.
- K. The Owner will issue the Notice of Substantial Completion after the Owner, in its sole and exclusive discretion, has determined that Substantial Completion of the Work has occurred.

Section 9.02 – Physical Completion and Completion and Acceptance

- A. After the Owner has issued the Notice of Substantial Completion, the Contractor shall comply with General Conditions Section 8.02 B. Compliance with General Conditions Section 8.02 B is a condition precedent to the payment described in General Conditions Section 8.02 A. Once the Owner approves the detailed estimate of the value of the known remaining items of Work and the schedule for achieving Physical Completion and Completion and Acceptance, the Contractor shall achieve Physical Completion and Completion and Acceptance no later than the dates for each in the approved schedule. The Owner and Contractor agree that achieving Physical Completion and Completion and Acceptance no later than the dates for each in the approved schedule is an essential condition of the Contract and that time is of the essence.
- B. The Contractor agrees that after achieving Substantial Completion, Contractor shall continue to prosecute the remaining items of Work regularly, diligently, and cooperatively with Other Contractors. Contractor further agrees that once the schedule for achieving Physical Completion and Completion and Acceptance is approved, the Contractor shall prosecute the remaining items of Work regularly, diligently, and cooperatively with Other Contractors at such a rate of progress as shall ensure the achieving of Physical Completion and Completion and Acceptance by the dates for each in the approved schedule.

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- C. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to General Conditions Section 8.02.
- D. The Owner will issue the Notice of Physical Completion after the Owner, in its sole and exclusive discretion, has determined that Physical Completion of the Work has occurred.
- E. The Owner will issue the Notice of Completion and Acceptance after the Owner, in its sole and exclusive discretion, has determined that Completion and Acceptance of the Work has occurred. Completion and Acceptance follows or may be concurrent with Physical Completion.

ARTICLE 10 -- CLAIMS AND DISPUTES

Section 10.01 - Claim for Extra Work

- A. If the Contractor claims that:
 - 1. a decision of, or direction or response to the Contractor by, the Owner, Consultant, or Owner Representative;
 - 2. a condition; or
 - 3. any action or omission of the Owner

is contrary to the terms and provisions of the Contract and will require the Contractor to perform Extra Work, Contractor shall file a written notice of Claim in strict accordance with General Conditions Section 10.03. No Claim for Extra Work shall be allowed unless the Contractor files a written notice of Claim that complies strictly with the requirements of General Conditions Sections 10.01 and 10.03. The notice of Claim shall identify the decision, direction, response, action, omission, or condition from which the Claim arises. The Contractor shall also strictly comply with all other requirements of General Conditions Sections 10.01 and 10.03.

- B. If the Owner determines the decision, response, direction, action, omission, or condition does not require the performance of Extra Work, the Owner shall issue a Disputed Work Directive. The Contractor, upon receipt of the Disputed Work Directive shall immediately and diligently proceed with the Work described in the Disputed Work Directive in accordance with all instructions of the Owner. Contractor's failure to proceed immediately and diligently with any Disputed Work Directive issued by the Owner, unless the Owner in writing directs otherwise, shall be a material breach of the Contract. Contractor's performance of the Work described in and pursuant to the Disputed Work Directive shall not be a waiver of the Contractor's Claim for Extra Work provided the Contractor strictly complies with all requirements of General Conditions Sections 10.01 and 10.03. The Owner may issue a Disputed Work Directive for a decision, response, direction, action, omission, or condition before the Contractor files a notice of Claim arising from such decision, response, direction, action, omission, or condition; if the Owner does so, the Contractor shall still file a notice of Claim in strict compliance with General Conditions Section 10.03 and shall strictly comply with all requirements of General Conditions Sections 10.01 and 10.03.
- C. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.01 and 10.03 shall be deemed to be:

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1. a conclusive and binding determination on the part of the Contractor that the decision, response, direction, action, omission, or condition does not involve Extra Work; and
2. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the decision, response, direction, action, omission, or condition.

Section 10.02 - Claim for Additional Cost

- A. If the Contractor wishes to make a Claim for an increase in the cost to perform the Work, including but not limited to a Claim alleging breach of the Contract by Owner, the Contractor shall file a written notice of Claim strictly in accordance with General Conditions Section 10.03. The notice of Claim shall identify the condition or event from which the Claim arises. No Claim for an increase in the cost to perform the Work of the Contract shall be allowed unless the Contractor files a notice of Claim that complies strictly with the requirements of General Conditions Section 10.02 and 10.03. Contractor shall also strictly comply with all other requirements of General Conditions Sections 10.02 and 10.03. The Owner shall determine the validity of the Contractor's contention. Pending the decision of the Owner, the Contractor shall proceed with the diligent and prompt performance of the Work. Denial of additional costs shall not entitle the Contractor to additional time to achieve Substantial Completion. Nothing in this paragraph waives any of Owner's rights under the Contract.
- B. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.02 and 10.03 shall be deemed to be:
 1. a conclusive and binding determination on the part of the Contractor that the event or condition does not increase the cost to perform the Work of the Contract; and
 2. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the event or condition.

Section 10.03 - Notice of Claim and Substantiation

- A. A written notice of Claim shall be delivered concurrently to the Owner's Representative and Project Controls Unit by the Contractor within fifteen (15) calendar days after occurrence of the event, decision, direction, response, action, or omission giving rise to such Claim or within fifteen (15) calendar days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. The burden of proving the Owner's receipt of the notice of Claim shall be the Contractor's responsibility.
- B. Within ninety (90) calendar days of the initial notice of Claim, the Contractor shall substantiate the Claim in writing and document the nature of the Claim and provide supporting cost data and documentation, Contractor's original cost estimate, Project CPM schedule demonstrating alleged impact of and correlation to the Claim subject matter and a Contractor affidavit stating the following:

"I hereby certify that the value assigned the work, labor, material and equipment that comprise the Claim, represents the actual value of said work, labor, material and equipment pursuant to the Contract between the undersigned and the Dormitory Authority."

 1. The Contractor shall provide, every thirty (30) calendar days thereafter for as long as such damages are incurred, written, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.

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2. Contractor shall identify the final written, verified statement for each Claim submitted pursuant to this paragraph.
 3. Each written, verified statement shall be delivered as set forth in paragraph C of this General Conditions Section 10.03.
- C. The Contractor shall provide the Owner's Representative one (1) paper copy of the documented Claim and mail two (2) paper copies of the documented Claim to:
- Dormitory Authority
Project Controls Unit
515 Broadway
Albany, NY 12207-2964
- D. The Owner, at any time after the Contractor files a notice of Claim, may request additional documentation to determine the validity of the Contractor's contention and the Contractor shall submit such additional documentation within the time period specified by the Owner in the Owner's request for additional documentation. The Owner, at any time after the Contractor files a notice of Claim, may request an electronic copy of the documented Claim and the Contractor shall submit such a copy within ten calendar days.
 - E. The value of any Claim, if allowed, shall be determined by the methods described in General Conditions Article 7 – Changes in the Work. No Claim shall be allowed unless and until a Change Order allowing the Claim is executed and delivered by the Owner to the Contractor; payment of an allowed Claim may be made only through an Application for Payment.
 - F. Any information representing the actual value of the labor performed, equipment utilized and material Furnished contained in the Claim that constitutes False Representation may subject the Contractor or Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.

Section 10.04 - No Damages for Delay

- A. No Claims for increased costs, charges, expenses, or damages of any kind shall be made by the Contractor against the Owner for any delays or hindrances from any cause whatsoever; provided that the Owner, in the Owner's sole and exclusive discretion, may compensate the Contractor for any said delays or hindrances by extending the date for achieving Substantial Completion specified in the Contract. No payment for increased cost, charge, expense, or damage of any kind shall act as a waiver of the Owner's right, in its sole and exclusive discretion, to compensate the Contractor for any delays or hindrances from any cause whatsoever solely by extending the date for achieving Substantial Completion specified in the Contract.
- B. If the Contractor claims that a delay or hindrance entitles the Contractor to additional time to achieve Substantial Completion, the Contractor shall submit a written request to the Owner for such additional time within fifteen (15) calendar days of the event or condition giving rise to the request. The written request shall identify the event or condition causing the alleged delay or hindrance giving rise to the request and show that the Contractor is not responsible for the delay or hindrance or for any concurrent delay. The Contractor shall submit with the request an updated Project CPM schedule that shows the impact of the event or condition on the Project CPM schedule. The request and updated Project CPM

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schedule shall be submitted to the Owner in accordance with General Conditions Section 10.03 C. The Owner may request additional documentation to decide the Contractor's request and the Contractor shall submit such additional documentation within the time period specified by Owner in the Owner's request for additional documentation. Failure of the Owner to respond in writing to a written request for additional time within thirty (30) calendar days shall be deemed a denial of the request unless the Owner extends the period to respond to the written request for additional time by written notice to the Contractor. While the Owner is considering the Contractor's request, the Contractor shall proceed with the diligent and prompt performance of the Work. Denial of additional time shall not entitle the Contractor to additional costs.

- C. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.03 and 10.04 shall be deemed to be:
 - 1. a conclusive and binding determination on the part of the Contractor that the event or condition causing the alleged delay or hindrance does not require additional time to achieve Substantial Completion; and
 - 2. a waiver by the Contractor of all Claims for additional time to achieve Substantial Completion as a result of the event or condition causing alleged delay or hindrance.

Section 10.05 - Continuance of the Work

Unless the Owner, in writing, permits otherwise, the Contractor shall proceed diligently and promptly with the performance of the Work while the Owner considers a notice of Claim filed pursuant to:

- A. General Conditions Sections 7.01D and 10.03;
- B. General Conditions Sections 10.01 and 10.03; or
- C. General Conditions Sections 10.02 and 10.03;

or while the Owner considers a request for additional time to achieve Substantial Completion filed pursuant to General Conditions Sections 10.03 and 10.04 or while the Owner considers any other Claim.

Section 10.06 - Resolution of Claim

- A. Any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion shall be final, binding and conclusive on the Contractor unless within fifteen (15) calendar days after receiving notice of the Owner's resolution, the Contractor files a written notice with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination. The written notice shall be filed in strict accordance with General Conditions Sections 10.03 C and 10.06. The Contractor's failure to comply strictly with these requirements shall be deemed to be a waiver by the Contractor of all Claims for additional compensation or damages included in the Claim and the request for additional time to achieve Substantial Completion.
- B. After any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion, the Contractor shall proceed diligently and promptly with the performance of the Work whether the Contractor files a written notice with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered

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by said resolution or determination or the Contractor does not file such a written notice. Nothing in this paragraph waives any of the Owner's rights under the Contract.

- C. Contractor shall file no action or proceeding in a court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion unless the Contractor shall have strictly complied with all the requirements relating to the giving of notice and of information with respect to such Claim or request for additional time to achieve Substantial Completion in this General Conditions Article 10. Nothing in this paragraph waives any of Owner's rights under the Contract.
- D. Contractor shall file no action or proceeding in court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion until Contractor has achieved Physical Completion of the Work. Contractor agrees that any court action or proceeding challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion filed before Contractor has achieved Physical Completion of the Work is premature. Nothing in this paragraph waives any of Owner's rights under the Contract. The Owner, in its sole and exclusive discretion, may modify this paragraph by a Contract Amendment.
- E. At its sole and exclusive discretion, the Owner may resolve any Claim or a request for additional time to achieve Substantial Completion without waiving its rights under the Contract.

ARTICLE 11 – TERMINATION OR SUSPENSION

Section 11.01 – Termination for Cause

- A. In the event that any provision of the Contract is violated by the Contractor or by any Subcontractor, the Owner may serve written notice upon the Contractor and upon the Contractor's surety, if any, of the Owner's intention to declare a Contractor Default (defined in the Performance Bond) and terminate the Contract. Such notice shall contain the reasons for the intention to declare a Contractor Default and terminate the Contract. The Contractor will be allowed an opportunity to show why the Owner should not declare a Contractor Default and why the Contractor's Contract should not be terminated for cause. If the violation shall not cease or arrangements satisfactory to the Owner are not made, the Owner, in writing, may declare a Contractor Default and the Contract shall terminate upon the date specified by the Owner in the declaration of Contractor Default. The Owner shall send the Contractor and the Contractor's surety, if any, written notice of and a copy of the declaration of Contractor Default and termination of the Contract. In the event of a declaration of Contractor Default and termination of the Contract, the Owner has the remedies set forth in the Performance Bond, the Contract, and all remedies at law or in equity.
- B. In the event of any such termination, the Owner may take over the Work and prosecute the Contract to completion and take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work. The Contractor and Contractor's surety shall be liable to the Owner for all costs incurred by the Owner.
- C. In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to General Conditions Section 11.02 – Termination for Convenience of Owner.

Section 11.02 - Termination for Convenience of Owner

- A. The Owner, at any time, may terminate the Contract in whole or in part. Any such termination shall be effected by delivering to the Contractor a written notice of termination specifying the extent to which

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performance of Work under the Contract is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from the termination.

- B. The Owner shall pay the Contractor for Work of the Contract performed by the Contractor and accepted by the Owner for the period extending from the end of the period covered by the last approved Application for Payment up to the effective date of the termination, an amount determined in accordance with General Conditions Article 7 – Changes in the Work. In no event shall the Contractor be entitled to compensation in excess of the total consideration of the Contract. In no event shall Contractor be entitled to overhead or profit on the Work not performed.
- C. In the event of such termination the Owner may take over the Work and prosecute the Contract to completion and may take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work.

Section 11.03 - Owner's Right to do Work

The Owner at any time may notify the Contractor that the Owner will have the Work of the Contract or any part thereof, performed by others, without terminating the Contract and without prejudice to any other right the Owner may have. The Owner may recover any and all costs related to such Work and deduct the value of such Work from the Contract amount.

Section 11.04 - Suspension of Work

- A. The Owner may order the Contractor in writing to suspend, delay or interrupt performance of all or any part of the Work for a reasonable period of time as the Owner may determine. The order shall contain the reason or reasons for issuance which may include, but is not limited to, latent field conditions, substantial program revisions, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired insurance, court order or acts of God.
- B. Upon receipt of a suspension order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.
- C. The Contractor specifically agrees that such suspension, interruption, or delay of the performance of the Work shall not increase the cost of performance of the Work. However, to the extent that the suspension of the Work is through no fault of the Contractor, the Owner may consider requests for compensation provided that the justification is submitted in accordance with General Conditions Article 10 – Claims and Disputes.
- D. The date of Substantial Completion of the Work may be extended by Change Order to compensate the Contractor for the time lost by the suspension, interruption, or delay.
- E. The Owner may terminate the suspension, interruption, or delay of the performance of the Work by a written direction to the Contractor or may invoke any other provision of General Conditions Article 11 – Termination or Suspension.

Section 11.05 - Stop Work

- A. Should the Contractor fail to comply with the terms of the Contract, including but not limited to the insurance requirements of the Contract, the Owner, at any time, by written order to the Contractor, can

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require the Contractor to stop all, or any part, of the Work called for by the Contract. The order shall be specifically identified as a Stop Work Order. Upon receipt of the order, the Contractor shall immediately comply with its terms and take reasonable steps to protect the Work covered by the order during the period of work stoppage. The Owner, at its option shall either:

1. Cancel the Stop Work Order after the Contractor has successfully remedied the cause of the Stop Work Order.
 2. Invoke any other provision of General Conditions Article 11 – Termination or Suspension.
- B. The Contractor shall not be entitled to an increase in time or costs as a result of the Stop Work Order.

ARTICLE 12 -- BENEFICIAL OCCUPANCY

Section 12.01 - Occupancy Prior to Substantial Completion

- A. If, before Substantial Completion, the Owner desires Beneficial Occupancy of any part of the Work, the Owner shall have the right to do so, and the Contractor shall in no way interfere with or object to Beneficial Occupancy. Payment for operational costs of Project systems for the part of the Work subject to Beneficial Occupancy from the time of Beneficial Occupancy to Substantial Completion shall be borne by the Owner, unless otherwise specified by the Contract.
- B. Said Beneficial Occupancy (1) shall not constitute acceptance of space, systems, materials, or elements of the Work and (2) shall not affect the obligations of the Contractor for Work which is not in accordance with the requirements of the Contract or other obligations of the Contractor under the Contract.

The Contractor shall continue the performance of the Work in a manner that shall not unreasonably interfere with said use, occupancy, and operation by the Owner.

ARTICLE 13 -- INSPECTION AND ACCEPTANCE

Section 13.01 - Access to the Work

The Owner shall at all times have access to the Work and the Contractor shall provide proper facilities for access. If the Contractor schedules or performs any Work on a day or at a time which results in a Dormitory Authority employee assigned to the Project receiving overtime compensation or an additional charge to the Dormitory Authority from an Other Contractor for such Work, the Dormitory Authority, in its sole and exclusive discretion, may deduct such overtime compensation and such additional charge from moneys due the Contractor. If the Contractor intends to schedule any Work, including but not limited to any testing or inspection, outside the regular operating hours for the Project, the Contractor must provide the Owner and any Other Contractor involved in such Work at least fifteen (15) calendar days written notice of the scheduled date for such Work. The Owner, in its sole and exclusive discretion, may reduce the required number of days of notice for one or more occasions by written notice to the Contractor and to any involved Other Contractors.

Section 13.02 - Notice for Testing and Inspection

If the Contract Documents, the Owner's instructions, laws, rules, ordinances, or regulations require that any Work be inspected or tested, the Contractor shall give the Owner a minimum of five (5) calendar days,

unless otherwise specified, written notice of readiness of the Work for inspection or testing and the date fixed for said inspection or testing.

Section 13.03 - Reexamination of Work

Reexamination of any part of the Work may be ordered by the Owner, and if so ordered the Work shall be uncovered by the Contractor. If said Work is found to be in accordance with the Contract, the Owner shall pay the cost of reexamination. If said Work is not found to be in accordance with the Contract, the Contractor shall pay the cost of reexamination and replacement.

Section 13.04 - Inspection of Work

All Work, all materials whether incorporated in the Work or not incorporated in the Work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the Owner, and the Owner shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which said Work, materials, processes of manufacture, and methods of construction are used. Any Work not approved by the Owner shall be reconstructed, made good, replaced, or corrected immediately by the Contractor including all work of Other Contractors destroyed or damaged by said removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of material and workmanship by the Owner shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.

Section 13.05 - Defective or Damaged Work

If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work damaged or not performed in accordance with the Contract Documents, the Contract amount shall be reduced by an amount, which in the judgment of the Owner, shall be deemed equitable.

Section 13.06 – Testing of Work

All materials and equipment used in the Work shall be subject to testing in accordance with accepted standards to establish conformance with the Contract Documents and suitability for intended use or as directed by the Owner. Any Work covered or concealed without the approval or consent of the Owner, shall be uncovered for examination. No testing by the Owner or by a testing laboratory on behalf of the Owner relieves the Contractor of the responsibility to maintain quality control of materials, equipment, and installation to conform to the requirements of the Contract Documents. The Owner may order additional testing for any test results below specified minimums, above specified maximums or otherwise unacceptable. Additional cost for testing, professional services and any other expenses related to the additional testing shall be at the Contractor's expense. The Owner may deduct such costs from moneys due the Contractor.

Section 13.07 - Final Completion

No previous inspection shall relieve the Contractor of the obligation to perform the Work in accordance with the Contract. No payment, either partial or full, by the Owner to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract Documents. The Contractor shall remedy all defects and deficiencies at the Contractor's expense, paying the cost of any damage to other Work, the work of Other Contractors and the property of the Owner or Client. No Work is completed and accepted until

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the Owner issues the Notice of Completion and Acceptance. Completion and Acceptance is limited to the Work described in the Notice of Completion and Acceptance.

Section 13.08 - Guarantee

The Contractor shall, in all respects, guarantee the Work to the Owner and be responsible for all material, equipment, and workmanship of the Work. The Contractor shall forthwith repair, replace or remedy in a manner approved by the Owner, at the Contractor's expense, any material, equipment, workmanship, or other part of the Work found by the Owner to be defective or otherwise faulty and not in compliance with the Contract Documents, which defect or fault appears during the minimum period of one (1) year, or such longer period as may be prescribed by the Contract, from the date of Substantial Completion determined by the Owner. For items of Work performed after the date of Substantial Completion, the minimum period of one (1) year in the preceding sentence shall begin with the date of Physical Completion. The Contractor shall also pay for any damage to the Work, any damage to the work of Other Contractors and any damage to the property of the Owner or Client resulting from said defect or fault.

ARTICLE 14 -- PROTECTION OF PERSONS AND PROPERTY

Section 14.01 – Site Safety and Protection

- A. The Contractor and each Subcontractor shall comply with all applicable rules, regulations, codes, and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The Contractor and each Subcontractor shall comply with all Client safety requirements. The Contractor and each Subcontractor shall comply with all City of New York safety requirements for Projects within the City of New York constructed in accordance with the Building Code of the City of New York.
- B. The Contractor and each Subcontractor, and only the Contractor and each Subcontractor, shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work and the Contractor shall require each Subcontractor to initiate, maintain and supervise its own safety precautions and programs for any portion of the Work for which the Subcontractor is responsible and to generate safety reports for days when safety inspections occur. The Contractor shall prepare and submit to the Owner a written safety plan for the Site showing how all safety requirements of applicable law and the Contract will be implemented for the duration of the Contract. The Contractor shall designate a responsible person at the Site whose duties shall include maintaining site safety pursuant to OSHA and any other applicable requirement, conducting weekly tool box meetings with its workers, implementing the Site safety plan and providing the Owner with a copy of such meeting minutes.
- C. The Owner shall provide the Contractor with copies of the Owner's safety orientation booklet. The Contractor shall provide a copy to each of its workers and to each worker of its Subcontractors prior to each worker starting Work. The Contractor shall maintain documentation that each worker received a copy of the Owner's safety orientation booklet prior to the worker starting Work.
- D. The Contractor and each Subcontractor shall, at all times: (1) guard the Owner's property from damage or loss in connection with the Work; (2) guard and protect the Contractor's Work and adjacent property; (3) replace or make good any said loss or damage unless said loss or damage is caused directly by the Owner; and (4) guard the lives and health of all persons on and in the vicinity of the Site.
- E. The Contractor and each Subcontractor shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work.

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- F. The Contractor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this General Conditions Section 14.01.

Section 14.02 - Protection of Work

- A. The Contractor shall be responsible for the safety, efficiency and adequacy of the Contractor's Work, plant, appliances, and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances, and methods.
- B. The Contractor shall have full responsibility to protect and maintain all materials on and off site in proper condition and forthwith repair, replace and make good any damage thereto until Physical Completion. The Contractor shall maintain an inventory of all materials for the Project that are delivered to the Site or approved for off-site storage facilities pursuant to General Conditions Section 8.01 G. All tools, spare parts, extra materials, attic stock and similar items delivered by the Contractor after Physical Completion shall be in proper condition and Contractor shall forthwith repair, replace, and make good any damage thereto until the later of Completion and Acceptance or the expiration of one year from delivery.
- C. The Contractor shall immediately report any loss, theft, burglary, vandalism, or damage of materials or installed work to the Owner by phone and email as soon as it is discovered. If vandalism, theft, or burglary is suspected as the cause of the loss, the Contractor shall notify Site security personnel and the municipal police, protect the place of the loss until released from protection by the Owner, and insure that no potential evidence relating to the loss is removed from the place of the loss.
- D. Any insurance claim alleging damage to the Work shall be submitted to the Owner pursuant to General Conditions Section 10.03.
- E. A claim for damage to the Work shall include the following in addition to the requirements of General Conditions Section 10.03:
1. A copy of a police report (if applicable).
 2. A complete inventory of damages or lost items including:
 - a. Description of each item.
 - b. Purchase date and proof of delivery of each item.
 - c. Supplier from whom purchased.
 - d. Serial number (if applicable).
 - e. Price of each item.
 3. The name, address and telephone number of the person who controlled the lost or damaged items immediately before the loss or damage.
 4. The name, address and telephone number of the person who discovered the loss or damage.
 5. A written description of how the loss or damage occurred.

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- F. The Owner may deny any claim from the Contractor under this General Conditions Section 14.02 if all items required by this General Conditions Section 14.02 are not provided or are not satisfactory to the Owner.

Section 14.03 - Protection of Lives and Health

- A. The Contractor and each Subcontractor shall be responsible for the safe performance of the Work and their Means and Methods of Construction and for any injury or loss that shall occur from a failure to meet such responsibility.
- B. The Contractor shall, within twenty-four (24) hours, notify the Owner and each Subcontractor shall, within twenty-four (24) hours, notify the Contractor of any incident, accident, illness, or injury that occurred on the Project Site. The Contractor shall follow-up and provide the Owner with a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any incident, accident, illness, or injury, a copy of the recorded OSHA Log and any and all reports and statements pertaining to such incident, accident, illness, or injury.
- C. The Contractor and each Subcontractor shall maintain a record of all cases of death, illness or injury requiring medical attention, hospitalization, or causing loss of time from work, arising out of and in the course of performance of Work of the Contract.
- D. The Contractor and each Subcontractor shall preserve and safeguard the area of any incident, accident, illness, or injury where the person required emergency medical treatment. The Contractor shall secure the area and not allow any material object or property to be altered, changed, moved, or removed from the area and post a person at the area to protect it. Safeguarding and protecting the area shall only be abandoned by the Contractor upon release by the Owner. The Contractor shall provide the Owner, within twenty-four (24) hours, a list of witnesses which includes the full name, home address, occupation and telephone number of each person and all maintenance records, tool box meeting records and daily reports reflecting the work performed on the day of the incident. The Contractor shall provide, within twenty-four (24) hours of learning of the actual or potential existence of any other witnesses, the Owner with updated information which includes the full name, home address, occupation, and telephone number of each additional witness.
- E. If, in the performance of the Work, a harmful hazard is created for which appliances or methods of elimination have been approved by regulatory authorities, the Contractor shall install, maintain, and operate said appliances or methods.
- F. The Contractor and each Subcontractor shall provide, within five (5) calendar days, written notice to each of its liability insurers (primary, excess and umbrella) of any such incident, accident, illness, injury, or death on the Project Site on behalf of itself, the Owner, the Client, and the Construction Manager. The Contractor and each Subcontractor shall provide to the Owner, the Client and the Construction Manager, a copy of such notice at the time such notice is given to each insurer as well as confirmation of receipt of such notice by each insurer.
- G. The Contractor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this General Conditions Section 14.03.
- H. Failure of the Contractor to comply with provisions of this General Conditions Section 14.03 shall be deemed a material breach of Contract and the Owner may impose a payment penalty on the Contractor for any act of non-compliance. The payment penalty shall not exceed one twentieth (1/20) of the

contract price or a maximum of One Thousand Dollars (\$1,000) for each time the Contractor fails to perform or to provide the information, reports, forms, etc. required in this General Conditions Section 14.03. This payment penalty is not exclusive; the Owner may avail itself of any other contractual remedy available.

Section 14.04 - Risks Assumed by the Contractor

The Contractor agrees that each duty set forth in this General Conditions Section 14.04 is separate, distinct, and independent from the other duties in this General Conditions Section 14.04.

- A. To the fullest extent permitted by law, the Contractor solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, of the Owner, of the Client, of any Subcontractor, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the performance of the Work, whether said risks are within or beyond the control of the Contractor and whether said risks involve any legal duty, primary or otherwise, imposed upon the Owner or Client, regardless of the presence or absence of culpable conduct on the part of the Contractor, excepting only risks which arise from faulty designs as shown by the Drawings and Specifications or from the percentage of negligence attributed to the Owner, the Client or the Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the loss, damage or injuries hereinafter set forth:
1. To the fullest extent permitted by law, the risk of loss or damage, including direct or indirect damage or loss, of whatever nature to the Work or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Owner, the Construction Manager, the Contractor or any Subcontractor, materialman or worker performing services or furnishing materials for the Work regardless of the presence or absence of any culpable conduct on the part of the Contractor, excepting only risks which arise from the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the loss or damage. The Contractor shall bear said risk of loss or damage until Physical Completion or until completion or removal of said plant, equipment, tools, materials or property from the Site and the vicinity thereof, whichever event occurs last. In the event of said loss or damage, the Contractor immediately shall repair, replace, or make good any said loss or damage.
 2. To the fullest extent permitted by law, the risk of claims, just or unjust, by third persons against the Contractor, the Owner, the Client, or the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Contractor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the operations of the Contractor or any Subcontractor or presence at or in the vicinity of the Site of the Contractor or any Subcontractor, regardless of the presence or absence of any culpable conduct on the part of the Contractor. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained prior to Physical Completion of the Work excepting only the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the deaths, losses, damages or injuries, regardless of the presence or absence of any culpable conduct on the part of the Contractor. The Contractor shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained after Physical Completion resulting from the Contractor's negligence or alleged negligence.

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3. To the fullest extent permitted by law, the Contractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the Contractor or otherwise, and to all property, arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Contractor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Contractor's or any Subcontractor's operations or presence at or in the vicinity of the Site, regardless of the presence or absence of any culpable conduct on the part of the Contractor. If any person shall make said claim for any damage or injury, including death resulting therefrom, or any alleged breach of any statutory duty or obligation on the part of the Owner, the Client, Construction Manager, or any of the servants and employees of the Owner, Client or Construction Manager, the Contractor shall indemnify and hold harmless the Owner, the Client, the Construction Manager, and any of such servants and employees, for any and all loss, damage or injury that the Owner, the Client Construction Manager, or any such servants and employees, may sustain as the result of any claim, provided however, the Contractor shall not be obligated to indemnify and hold harmless the Owner, the Client Construction Manager, and any such servants and employees for their own negligence, if any. In the event that any negligence is attributed to the Owner, Client, Construction Manager or any such servants or employees, then that particular entity or person shall be indemnified and held harmless for all of its liability minus the percentage of negligence attributed to that particular entity or person.
 4. Notwithstanding any contrary provision of the Contract, and to the fullest extent permitted by law, the Contractor shall, within ten (10) calendar days of notice from the Owner, Client or Construction Manager, assume the obligation to defend and represent the Owner, the Client, the Construction Manager, and any of the servants and employees of the Owner, Client or Construction Manager, with counsel selected by the Owner, in all claims by third parties arising out of or alleged to arise out of or as a result of or in any way associated with the duties, obligations or requirements of the Contractor or any Subcontractor pursuant to the Contract, or the presence of the Contractor or any Subcontractor on the Site. This obligation to defend applies immediately and is separate and independent of and distinct from the enforceability of any obligation of Contractor or any Subcontractor to indemnify or hold harmless the Owner, the Client, the Construction Manager and the servants or employees of the Owner, Client, and Construction Manager. The Contractor's obligation to defend includes, but is not limited to, payment of any legal fees associated with defending the Owner, the Client, the Construction Manager and any such servants and employees, all costs of investigation, expert evaluation, and any other costs. If the Contractor fails to so defend and represent the Owner, the Client, the Construction Manager, or any such servants and employees with counsel selected by the Owner, the Owner may proceed to defend and represent itself, the Client, the Construction Manager and any such servant and employee with counsel selected by Owner. Contractor shall make payment of the selected counsel's fees and expenses and all other defense costs incurred by Owner immediately upon receipt of Owner's demand.
- B. The Contractor's obligations under this General Conditions Article shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Contractor shall notify its insurance carrier within twenty-four (24) hours after receiving a written notice of loss or damage or claim from the Owner, the Client, or the Construction Manager. The Contractor shall make a claim to its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner, the Client or Construction Manager including those of being a named insured or an additional insured where applicable.
- C. Neither Completion and Acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this General Conditions Article. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the

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Contractor is responsible shall not be deemed to limit the effect of the provisions of this General Conditions Article or to imply that the Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this General Conditions Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor or particular claims for which the Contractor is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of said enumerations.

- D. Notwithstanding any provision of the Contract to the contrary, and to the fullest extent permitted by law, if the Contractor does not fulfill one or more of Contractor's obligations under General Conditions Articles 14 and 15 to defend, indemnify, hold harmless, and procure insurance for the Owner, Client and Construction Manager, and the Owner, Client or Construction Manager commences a court action to enforce one or more of the Contractor's obligations to defend, indemnify, hold harmless and procure insurance for the Owner, Client and Construction Manager, the Contractor, in addition to its other obligations, shall pay the costs of the Owner, Client and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses and court fees. If the Owner, Client, or Construction Manager commences a court action against an insurance company to obtain coverage under an insurance policy which the Contractor represented would provide coverage to the Owner, Client or Construction Manager, the Contractor, in addition to its other obligations, shall pay the costs of the Owner, Client, and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses, and court fees.

ARTICLE 15--INSURANCE AND BONDS

Section 15.01 - General Provisions

- A. The Contractor and Subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the Owner and of the insurance companies issuing such policies.
- B. The Contractor and Subcontractors shall maintain in force all insurance required to be procured by them under this Contract until issuance of the Notice of Physical Completion by the Owner except where this Contract requires an insurance policy to be maintained for a period beyond issuance of the Notice of Physical Completion in which case the Contractor and Subcontractors shall maintain such insurance policy in force for the specified period beyond issuance of the Notice of Physical Completion.
- C. All insurance required to be procured and maintained by the Contractor and Subcontractors under this Contract shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner in its sole and exclusive discretion.
- D. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to the Owner except for non-payment in which case notice to the Owner shall be provided as required by law.
- E. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the

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carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the Owner.

- F. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall be written on an occurrence basis except where this Contract explicitly allows otherwise.
- G. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the Owner and the Client shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the Contractor or Subcontractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. At any time this Contract requires the Contractor or any Subcontractor to maintain an insurance policy, the Owner may require the Contractor or any Subcontractor to provide proof, acceptable to the Owner in its sole discretion, that the Contractor or Subcontractor has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the Contractor or Subcontractor may be liable under the claims pending or reasonably possible against the Contractor or Subcontractor at the time the Owner requires the proof. A failure of the Contractor or Subcontractor to provide such proof is a failure of the Contractor or Subcontractor to maintain the insurance required by the Contract or to provide the Owner with evidence of valid and in-force insurance coverage required by the Contract for purposes of General Conditions Section 15.05.
- H. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that there shall be no right of subrogation against the Owner, Client, or Construction Manager. If any of the Contractor's policies or any of the policies of any Subcontractor prohibit such a waiver of subrogation, the Contractor or Subcontractor shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the Owner and Construction Manager.
- I. Each liability and protective liability insurance policy required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the coverage afforded the Owner, Client and Construction Manager under such policy shall be primary and non-contributory and that such policy shall be primary to any other insurance policy maintained by the Owner, by the Client or by the Construction Manager. Any other insurance policy maintained by the Owner, by the Client or by the Construction Manager shall be in excess of and shall not contribute with the Contractor's or Subcontractor's insurance policy, regardless of the "other insurance" clause contained in the Owner's, Client's or Construction Manager's own policy of insurance or the Contractor's or Subcontractor's insurance policies.
- J. Any other Contract Document, including but not limited to the Information for Bidders, but excluding Change Orders, may require any of the Contractor and Subcontractors to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the Owner or Client.
- K. Notwithstanding any other provision of the Contract, the Owner, in a Change Order or Contract Amendment, may require the Contractor and any or all Subcontractors to provide, at the expense of the Owner, any other form or limit of insurance in addition to the insurance requirements of the original Contract necessary to secure the interests of the Owner, Client, or Construction Manager.
- L. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Client, the Contractor or the Construction Manager shall in any way be construed or deemed to limit, discharge,

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waive or release the Contractor or any Subcontractor from any of the obligations or risks accepted by the Contractor and Subcontractors or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the Owner, Client and Construction Manager.

- M. All provisions of General Conditions Article 14 - Protection of Persons and Property and General Conditions Article 15 – Insurance and Bonds are to the fullest extent permitted by law. One purpose of this Contract is to allocate, to the fullest extent permitted by law, all risk of loss to the Contractor, each Subcontractor, and the insurers of each. Each insurance company from which Owner or Client has directly purchased an insurance policy is a third-party beneficiary of the Contractor's and each Subcontractor's obligations to procure insurance.
- N. Contractor is responsible for ensuring that each Subcontractor obtains and maintains in the required amount each type of insurance policy required by this Contract and that such insurance policy provides the Owner, Client and Construction Manager with the coverage required by this Contract.
- O. Contractor agrees and acknowledges that, because the Contractor (and not the Owner or Client) is responsible for performance of the duties and obligations set forth in this Contract for completion of the Project, the Contractor, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the Owner and Client.

Section 15.02 - Submission of Insurance

- A. Owner will not execute the Contract unless the Contractor shall submit to the Owner or the Owner's designee proof of insurance in such forms as requested and deemed acceptable by the Owner, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide a copy of each insurance policy required by the Contract certified by the insurance carrier as a true and complete copy. The Owner may request such a certified copy of a policy at any time and may make such requests as often as the Owner, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the Owner, constitute a warranty by the Contractor and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- B. The Contractor shall submit insurance certificates (Accord 25 and 855, or equivalent as determined by the Owner), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the Owner, Client, and Construction Manager, and such other documents requested by the Owner as proof of insurance for the Contractor. All insurance submittals must be approved by the Owner prior to the Contractor's commencement of Work.
- C. Upon the Owner's request, the Contractor shall submit to the Owner or Owner's designee proof of insurance for one or more Subcontractors, in such forms as requested and deemed acceptable by the Owner, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide a copy of each insurance policy of the Subcontractor or Subcontractors required by the Contract and certified by the insurance carrier as a true and complete copy. The Owner may request such a certified copy of a policy at any time and may make such requests as often as the Owner, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies for one or more Subcontractors. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates

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of insurance of the Subcontractors, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the Owner by the Contractor, constitute a warranty by the Contractor, the Subcontractor and the Subcontractor's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

- D. Upon request of the Owner made any time after bids are opened, the Contractor shall submit insurance certificates (Accord 25 and 855, or equivalent as determined by the Owner), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the Owner, Client, and Construction Manager, and such other documents requested by the Owner as proof of insurance for a Subcontractor. Owner may request proof of insurance for one or more Subcontractors at the same or at different times and may request proof of insurance for a particular Subcontractor as often as Owner, in its sole and exclusive discretion, determines is necessary.

Section 15.03 - Insurance Provided by Contractor

- A. Prior to award of the Contract, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract all of the insurance required under this Contract. Each Subcontractor shall procure, at its sole cost and expense, prior to the Contractor submitting to the Owner the name of such Subcontractor and prior to such Subcontractor commencing performance of any of the Work, and each Subcontractor shall maintain in force at all times required by this Contract all of the insurance required under this Contract. The insurance that the Contractor and each Subcontractor shall procure and maintain under this Contract includes, but is not limited to, the following:
1. Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (**Acord certificates are not acceptable**):
 - a. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
 - b. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
 - c. GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Group Self Insurance Administrator shall provide a completed form.
 - d. SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Self Insurance Administrator shall provide a completed form.
 2. Disability Benefits insurance. Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:

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- a. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
 - b. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers’ Compensation Board’s Self Insurance Office shall provide a completed form.
 - c. CE 200 Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority will not accept this as an exemption from providing Worker’s Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board’s website at <http://www.wcb.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contract.
3. Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the Contractor or Subcontractor for bodily injury, property damage, and personal/advertising injury arising from performance of the Work or operations or presence at or in the vicinity of the Site of the Contract. The policy shall utilize ISO form CG 00 01 12 07 or a form providing equivalent coverage. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least \$2,000,000; the general aggregate limit shall be at least \$2,000,000; the personal and advertising injury limit shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$2,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
- a. If the Contractor or Subcontractor proposes the use of a policy other than the ISO form CG 00 01 12 07, the Contractor or Subcontractor shall provide the proposed policy to the Owner which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The Contractor or Subcontractor shall pay Owner any attorney fees and other costs incurred by Owner in determining whether the proposed policy provides equivalent coverage. Owner will select the attorney providing advice on the proposed policy.
 - b. ISO Endorsement Forms CG 20 10 11/85 and CG 20 37 10 01, or their equivalents, specifically naming as additional insureds the Dormitory Authority and Client and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents and for form CG 20 37 10 01 or its equivalent, specifically listing the Project location.
 - c. If the Contractor or Subcontractor proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 11/85 and CG 20 37 10 01, the Contractor or Subcontractor shall provide the proposed endorsement(s) to the Owner which, in its sole and exclusive discretion, will determine whether the proposed endorsements provide equivalent coverage. Contractor and Subcontractor shall pay Owner any attorney fees and other costs incurred by Owner in determining whether the proposed endorsements provide equivalent coverage. Owner will select the attorney providing advice on the proposed endorsements.
 - d. Additional insured status for Owner, Client and Construction Manager shall apply during the Products/Completed Operations phase as well as during the course of performance of the Work.
 - e. The policy provisions required by General Conditions Section 15.01.

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- f. Excavation, Collapse and Underground Hazards.
 - g. Independent contractors/subcontractors.
 - h. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Contract, and covering tort liability of another assumed in a contract.
 - i. Products and completed operations coverage for a term no less than three years commencing upon issuance by the Owner of the Notice of Physical Completion.
 - j. Premises liability.
 - k. Defense and/or indemnification obligations, including obligations assumed under this Contract.
 - l. Cross liability for additional insureds.
 - m. Contractor and Subcontractor means and methods.
 - n. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
 - o. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
 - p. The maximum deductible or self-insured retention shall be \$50,000.
 - q. No endorsement or provision in the policy shall exclude coverage for Owner, Client, or Construction Manager for any liability when the injured party is an employee of Contractor or any Subcontractor.
 - r. No endorsement or provision in the policy shall require privity of contract between the Owner and Subcontractor or between the Client and the Contractor or Subcontractor or between the Construction Manager and the Contractor or Subcontractor in order for the Owner, the Client, or the Construction Manager to have coverage as an insured on such insurance policy.
 - s. If the Contractor or Subcontractor must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.
 - t. No endorsement or provision in the policy shall have a height limitation or exclusion.
 - u. No endorsement or provision in the policy shall have a classification exclusion as respects work performed for the Owner, Client, and Construction Manager.
 - v. Owner, Client, and Construction Manager shall be covered for any and all liability arising out of acts or omissions of Contractor and any Subcontractor.
4. Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least

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\$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

5. Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding paragraphs, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding paragraphs. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding paragraphs. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the Owner or Client or Construction Manager or any other additional insured. Any other insurance maintained by the Owner, the Client, the Construction Manager, or any other additional insured shall be in excess of and shall not contribute with the Contractor's or Subcontractor's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the Owner's or Client's or Construction Manager's or other additional insured's own policy of insurance or the Contractor's or Subcontractor's insurance policies.
 6. The Contractor shall secure, pay for, and maintain property insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed, or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not render the Owner, Client and, if applicable, the Construction Manager and other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents or their agents and employees responsible for any losses; and the Owner, Client and, if applicable, the Construction Manager and other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents and their agents and employees shall have no such liability.
- B. Notwithstanding any other provision of the Contract to the contrary and to the fullest extent permitted by law, Contractor shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the Owner, the Client or the Construction Manager in any action brought by or against the Owner, Client or Construction Manager concerning insurance coverage owed to Owner, Client or Construction Manager by any insurer for which Contractor or any Subcontractor represented that the Owner, Client and Construction Manager would be an insured or would benefit in any way if a claim was brought against Owner, Client and Construction Manager .

Section 15.04 - Other Insurance Provided by Contractor

The Contractor and each Subcontractor shall also procure and maintain as required by General Conditions Sections 15.01 B and 15.03 A the following insurance:

- A. United States Longshore and Harbor Workers' Compensation Act and Jones Act: When, to perform the Work, the Contractor or any Subcontractor is engaged in activities on or near a shoreline or on or near the navigable waterways of the United States or when any part of the Work is connected to water related activities, the Workers' Compensation policy referenced above of the Contractor and any such

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Subcontractor shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.

- B. Contractor's Pollution Liability insurance: When the Work includes abatement, removal, repair, replacement, enclosure, encapsulation or disposal of any pollutants, which include but are not limited to, petroleum, petroleum products, mold, asbestos, lead or any other Hazardous Material, the Contractor or any Subcontractor performing Work involving any of the pollutants, shall procure and maintain in full force and effect pollution legal liability insurance with limits of at least \$2,000,000 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:
1. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client, and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.
 2. The policy provisions required by General Conditions Section 15.01.
 3. A maximum deductible or self-insured retention of \$50,000.
 4. Coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the Owner, Client or Construction Manager arising from the Work.
 5. Coverage shall be provided until three years after the Owner issues the Certificate of Physical Completion.
- C. Railroad Protective Liability insurance: If any Work of the Contract is to be performed on or within fifty (50) feet of a railroad property or railroad right of way or will require entrance upon railroad property or right of way or will require assignment of a railroad employee, the Contractor shall provide and maintain a Railroad Protective Liability policy with the policy limits required by the owner(s) of the railroad. For purposes of this paragraph, a subway is a railroad. The policy form shall be ISO-RIMA or an equivalent form approved by the owner(s) of the railroad. The railroad owner(s) shall be the named insured on the policy and the definition of "physical damage to property" shall mean direct and accidental loss of or damage to all property of any named insured and all property in any named insured's care, custody, or control. If the Contractor shall provide a Railroad Protective Liability insurance policy, the Contractor and any Subcontractor performing on or within fifty (50) feet of railroad property or railroad right of way or entering railroad property or right of way or requiring assignment of a railroad employee shall have their CGL insurance policy endorsed to delete the exclusion of coverage for Work within fifty (50) feet of railroad property.
- D. Professional Liability insurance: Each of the Contractor and any Subcontractor performing any Work which involves delegation of design shall procure and maintain Error and Omissions Liability Insurance for the delegated design Work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the Contractor or Subcontractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. This insurance may be issued on a claims-made policy form and shall be maintained for no less than three (3) years after issuance by the Owner of the Notice of Physical Completion. The policy, at the sole expense of the Contractor or Subcontractor, shall have extended Discovery Clause coverage of at least three (3) years after issuance by the Owner of the Notice

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of Physical Completion if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.

- E. Marine Protection & Indemnity insurance and Hull & Machinery insurance: Each of the Contractor and any Subcontractor performing any Work on navigable water or connected to water-related activities or with marine operations, shall procure and maintain Marine Protection & Indemnity insurance and Hull & Machinery insurance. Hull & Machinery coverage shall be provided for the total value of the watercraft and equipment used in the Work on navigable water or connected to water-related activities or with marine operations. The Contractor shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract with a minimum limit of \$2,000,000. The Owner, the Client and, if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:
1. The policy provisions required by General Conditions Section 15.01.
 2. A maximum deductible or self-insured retention of \$50,000.
 3. Coverage shall be provided until the Owner issues the Certificate of Physical Completion.
 4. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client, and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.

Section 15.05 - Stop Work Order - Insurance

- A. All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The Contractor shall be responsible to submit updated insurance certificates thirty (30) calendar days prior to any insurance certificate expiration date.
- B. Failure of the Contractor or any Subcontractor to maintain the insurance required by the Contract or to provide the Owner with evidence of valid and in-force insurance coverage required by the Contract shall result in a Stop Work Order pursuant to General Conditions Article 11 – Termination or Suspension and/or withholding of payment to the Contractor.
- C. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Contractor or Subcontractor shall immediately cease Work on the Project. The Contractor or Subcontractor shall not resume Work on the Project until authorized to do so by the Owner.
- D. Any delay or time lost as a result of the Contractor or Subcontractor not having proper insurance required by this General Conditions Article or not providing the Owner with evidence of valid and in force insurance required by the Contract shall not give rise to a delay Claim or any other Claim against the Owner. Further, the Contractor may be liable to other contractors for costs incurred by reason of the Contractor's or Subcontractor's failure to provide insurance.

Section 15.06 – Builder’s Risk

- A. The Owner will provide Builder’s Risk insurance for all projects, except for those projects listed in paragraph B of this General Conditions Section 15.06.
1. The Owner shall, except as otherwise specified, at all times beginning with the Notice to Proceed and until Substantial Completion, procure and maintain, at the Owner’s sole cost and expense, “All Risk” Builder’s Risk insurance. The Contractor and Subcontractors will be covered for the Work of the Contract, except losses up to and including the deductible shall be borne by the Contractor. The Owner shall, at the Owner’s sole discretion, have the power to adjust and to settle with the insurer any loss or claim under the Builder’s Risk insurance. Reimbursement for loss, if any, shall be made payable to the Owner. The deductible is stated in the Information for Bidders.
 2. Coverage shall include sub limits for property in transit and for property in storage on and off the Site. Specific higher limits for transit or for storage may be available as circumstances may require upon written request by the Contractor or any Subcontractor to the Owner at least 30 calendar days before such higher limit would take effect if the request is granted. Owner in its sole and exclusive discretion may grant or deny the request for a higher limit for transit or storage. If the Owner denies the request, the Contractor or Subcontractor shall have no Claim against the Owner for any cost or damage. If the Owner grants the request, the Owner may condition the grant upon the Contractor or Subcontractor paying the additional cost for the higher limit for transit or storage.
 3. No coverage shall be provided to the Contractor or any Subcontractor under any property insurance policy of the Owner or Client which only covers completed, occupied structures.
- B. The Contractor shall procure and maintain, at its sole cost and expense, Builder’s Risk insurance for all OMH, OPWDD, OASAS, NYCHA, and HTFC-GOSR projects, or when otherwise specified, as provided below.
1. The Contractor shall maintain until the date of Physical Completion, an All Risk Builder’s Risk Completed Value Form insurance policy, with coverage for at least the value of the Work of the Contract except for excavation work, planting and seeding, and Work buried in the ground other than wiring and walking tunnels, but including debris removal costs and architect, engineering and other costs to evaluate damage and provide any design or other services necessary to correct or minimize damage in the event of damage to the Work covered by the policy or such higher amount of coverage as required by the Owner in this Contract. Debris removal costs shall include demolition as may be necessary by the operation of any law, ordinance, or regulation. The policy shall cover property of the Owner or Client when in the Contractor’s care, custody, or control. The policy shall name as insureds the Owner, Client and Contractor and shall include such soft costs coverage for the Owner and Client as specified in this Contract. The extended coverage endorsement may include a loss deductible of \$10,000 or less. The Contractor shall bear all losses up to and including the deductible provision.
 2. Coverage shall also include sub limits for equipment, material, and other property in transit or in storage on or off the Site. Specific higher limits of coverage for property in transit or storage, at Contractor’s expense, may be required by the Owner due to circumstances of the Project.

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3. Each Builder's Risk insurance policy shall include the following endorsement:

"It is made a condition of this insurance that until the Owner issues the Notice of Physical Completion to the Contractor, occupancy of the premises shall not require consent of the insurer, nor shall such occupancy be the basis for a rate adjustment."

4. Builder's Risk insurance policy shall name the Dormitory Authority and the Contractor Loss Payees in order of precedence, as their interests may appear and shall run until the date of Physical Completion. Policies expiring on a fixed date before Physical Completion shall be renewed not less than thirty (30) calendar days before such expiration date. Such policy shall not be changed by endorsement without the knowledge and consent of the Owner and in particular, shall provide that no notice of cancellation by the insurer shall be effective until sixty (60) calendar days after such notice is received by the Owner. If the policy is issued by a mutual insurance company, the policy shall provide that the Owner and the Client shall not be liable for any premium or assessment under the policy; the Contractor shall be responsible for all premiums and assessments.
5. The Owner may withhold the Contractor's payment for Work which is required to be insured until original binder or policies for the Builder's Risk insurance are provided to the Owner pursuant to General Conditions Section 15.06.

Section 15.07 - Bonds Provided by Contractor

- A. The Contractor shall provide an initial Payment Bond in the amount of \$50,000 for the payment of all persons performing labor or providing materials in connection with the Work of the Contract. Within ten (10) days of the issuance of a Job Order and Payment Bond form by the Owner, the Contractor shall replace the initial Payment Bond with a Payment Bond in the amount of at least equal to 100% of the Job Order amount for the payment of all persons performing labor or providing materials in connection with the Work of the Job Order. The Owner reserves the right to cancel the Job Order in the event that the Payment Bond is not provided within ten (10) days as required herein. The Owner, in its discretion, may require the Contractor to provide a Performance Bond in an amount at least equal to 100% of the Job Order amount as security for the faithful performance of the Job Order.
- B. If at any time the Owner, in its sole and exclusive discretion, shall become dissatisfied with any surety or sureties upon the Performance Bond or the Payment Bond, or if for any other reason said bonds shall cease to be adequate security to the Owner, the Contractor shall, within five (5) calendar days after written notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.
- C. The surety company, on all bonds, shall be authorized to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner in its sole and exclusive discretion.

ARTICLE 16 -- GENERAL PROVISIONS of the CONTRACT

Section 16.01 - General Law Provisions

- A. This Contract and its enforcement, and any controversy arising out of or relating to the making or performance of this Contract, shall be governed by and construed in accordance with the law of the

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State of New York, without regard to the New York principles of conflicts-of law and except where the United States supremacy clause requires otherwise.

- B. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and shall be enforced as though so included therein.
- C. The Contractor shall comply fully with all applicable laws, rules, and regulations, and as applicable, Building Code of New York State or Building Code of the City of New York.
- D. The Contractor agrees that the Contract shall be deemed executory to the extent of moneys available from either: (1) the proceeds of bonds issued by the Dormitory Authority for the Contract, (2) moneys made available by the Client to the Owner for the Contract, (3) other moneys made available to the Owner from whatever source specifically for the Contract and no liability shall be incurred by the Owner beyond moneys available therefore.
- E. The relationship created by the Contract between the Owner and the Contractor is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Contractor nor is it to be construed as, in any way or under any circumstances, creating or appointing the Contractor as an agent of the Owner for any purpose whatsoever.
- F. The Client is an intended third-party beneficiary of the Contract for the purposes of recovering any damages incurred by the Client and caused by the Contractor.
- G. The Contractor shall not assign the Contract in whole or in part without prior written consent of the Owner. Any attempt to assign the Contract in whole or in part without prior written consent of the Owner is null and void. As a condition to consent to the assignment, the Owner shall require each proposed assignee to establish, to the satisfaction of the Owner in its sole and exclusive discretion, that the assignee is responsible and, if applicable, has the experience to perform the Work. If the Owner consents to an assignment and if the Contractor assigns all or part of any moneys due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that the Contractor and assignee agree that the assignee's right in and to any moneys due or to become due to the Contractor shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work. The Owner reserves the right to assign this Contract in whole or in part without the consent of the Contractor.
- H. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the Owner, the State of New York, the Client, and the Construction Manager, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the Contract.
- I. The Owner is exempt from the terms of fair trade agreements for sales to the Contract.
- J. Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which might be committed by the Owner, the Contractor agrees that no default, act or omission of the Owner shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the Contract or to suspend or abandon performance of the Contract; and the Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be or become entitled to because of any wrongful act or omission of the Owner saving only the Contractor's right to money damages.

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- K. No action or proceeding shall lie or shall be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any Claim arising out of or based upon the Contract, relating to the giving of notices or information.
- L. No action or proceeding shall lie in favor of or shall be maintained by the Contractor against the Owner unless such action shall be commenced within one year after the earliest following event:
 - 1. The date the Owner executes the Notice of Physical Completion.
 - 2. Receipt, by the Owner, of the Contractor's final Application for Payment, if no Notice of Physical Completion is issued.
 - 3. The date of termination if the Owner terminates the Contract.
- M. The Owner and Contractor agree to submit to the exclusive jurisdiction of the Commercial Division, New York Supreme Court, which shall hear any dispute, Claim or controversy arising in connection with or relating to this Contract, including, but not limited to the validity, breach, enforcement, or termination thereof.
- N. No action or proceeding shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue. The Contractor expressly waives the right to a trial by jury in any action or proceeding brought against the Owner.
- O. If the Contractor obtains a judgment against the Owner in any action or proceeding, the Contractor agrees to accept no more than three percent (3%) interest, per annum, on the amount of the judgment.

Section 16.02 - Diesel Emissions Reduction

- A. The Contractor shall certify that heavy duty vehicles, as defined in the NYS Environmental Conservation Law (ECL) Section 19-0323 and Title 6 of the New York Codes Rules and Regulations, Part 248 (6 NYCRR 248), will comply with the rules, regulations and provisions pursuant to ECL Section 19-0323, and 6 NYCRR 248, which requires the use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel to the extent required by law unless specifically waived by the NYS Department of Environmental Conservation (DEC). Qualification for a waiver will be the responsibility of the Contractor.
- B. Annually, as required by DEC, but no later than March 1st, the Contractor shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Contractors Annual Report Form, found on the DEC website <http://www.dec.state.ny.gov> for vehicles used on the Project for the preceding calendar year.
- C. The Contractor shall certify to the Owner, and submit with each Application for Payment, the Contractor and Subcontractor Certifications form, which states that the Contractor agrees to comply with the provisions of General Conditions Section 16.02.

Section 16.03 – State and Federal Labor Law Provisions

- A. All applicable provisions of NYS Labor Law shall be carried out in the performance of the Work.
- B. The Contractor specifically agrees, as required by NYS Labor Law, Sections 220 and 220-d as amended, that:

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1. No worker, in the employ of the Contractor, any Subcontractor or any other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day and more than five (5) days in any one week, except in the extraordinary emergencies set forth in NYS Labor Law.
 2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by NYS Labor Law. Each laborer, worker or mechanic employed by the Contractor, any Subcontractor or any other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be paid not less than the prevailing rate of wages as defined by NYS Labor Law and shall be provided not less than the supplements as required by NYS Labor Law.
 3. The minimum hourly rate of wage to be paid and supplements provided shall be not less than that required by the NYS Labor Law and as shall be designated by the Commissioner of Labor of the State of New York.
 4. The Contractor and all Subcontractors shall post in a prominent and accessible place on the Site, a legible statement of all minimum wage rates and supplements to be paid or provided for the various classes of workers engaged in the performance of the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by any worker so engaged.
 5. The Contractor and all Subcontractors shall provide each worker a written notice of the prevailing wage rate for each of the worker's particular job classifications on each pay stub and, as required by the NYS Labor Law, written notice that includes the telephone number and address for the Department of Labor and a notice informing all workers of their right to contact the Department of Labor if a worker is not receiving the proper prevailing rate of wages and/or supplements for a worker's particular job classification.
 6. The Contractor shall be responsible for obtaining prevailing wage rate updates directly from the NYS Department of Labor, either by accessing its website <http://www.labor.state.ny.us> or a written request to the Bureau of Public Works.
- C. The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeyman mechanics as an individual registered in an apprenticeship program which is duly registered with the Commissioner of Labor of the State of New York in conformity with the NYS Labor Law. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the NYS Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations.
- D. All workers of the Contractor and all Subcontractors shall be paid in accordance with the provisions of the NYS Labor Law. The Contractor and all Subcontractors shall submit to the Owner original copies of the Contractor and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request. The Contractor and all Subcontractors shall prepare and keep original payrolls or transcripts thereof in compliance with NYS Labor Law Section 220, subdivision 3-a, and shall file transcripts of such payrolls with the Owner as required by NYS Labor Law Section 220, subdivision 3-a. Filing the transcripts of such payrolls with the Owner as required

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by NYS Labor Law Section 220, subdivision 3-a is a condition precedent to payment of any sums due and owing Contractor or any Subcontractor for Work performed upon the Project.

- E. The Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by the Contractor or any Subcontractor, the Owner shall withhold from the Contractor out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract and the wages actually paid such worker for the total number of hours worked, and that the Owner may disburse such amount so withheld by the Owner for and on account of the Contractor to the worker to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the amounts and percentages to be retained by the Owner pursuant to other provisions of the Contract.
- F. Pursuant to subdivision 3 of Section 220 and Section 220-d of the NYS Labor Law the Contract shall be forfeited and no sum paid for any Work done thereunder upon a Contractor's or Subcontractor's second conviction for willfully paying or providing less than:
 - 1. The stipulated wage scale or supplement as established by the fiscal officer.
 - 2. The stipulated minimum hourly wage scale and supplements as designated by the Commissioner of Labor of the State of New York.
- G. If the project is Federally funded in part or whole and therefore subject to the requirements of the Davis Bacon Act, the U.S. Department of Labor's government-wide implementation of the Act, or to Federal program legislation, the Contractor shall pay the higher of either NYS Department of Labor prevailing wage rates or wages established for the locality of the project by the U.S. Department of Labor.
- H. The Contractor specifically agrees that all workers engaged on the Site, whether employees of the Contractor, Subcontractor, or other person performing or contracting to do any part of the Work, shall be certified, prior to performing any Work, as having successfully completed the OSHA 10-hour construction safety and health course as required by NYS Labor Law Section 220-h.

Section 16.04 - Nondiscrimination

- A. To the extent required by Article 15 of the NYS Executive Law (also known as the Human Rights Law) and all other NYS and United States statutory and constitutional non-discrimination provisions, the Contractor shall 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 status.
- B. If the Contractor is directed to do so by the Owner, the Contractor shall request each employment agency, labor union or authorized representative of workers with which the Contractor has a collective bargaining agreement 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, sex, national origin, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations under Articles 15 and 15A of the NYS Executive Law.
- C. The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of the 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.

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- D. The Contractor shall include the provisions of paragraphs A, B, and C of this General Conditions Section 16.04 in every Subcontract and purchase order in such a manner that such provisions will be binding upon each Subcontractor and vendor as to the operations for the Contract to be performed within the State of New York.
- E. Pursuant to NYS Labor Law, Section 220-e, the Contractor specifically agrees:
1. That in the hiring of employees for the performance of Work under the Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operations performed within the territorial limits of the State of New York, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates.
 2. That no Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, creed, color, disability, sex, or national origin.
 3. That there may be deducted from the amount payable to the Contractor, by the Owner under the Contract, a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of the Contract.
 4. That the Contract may be canceled or terminated by the Owner and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section 16.04 E of the Contract.

Section 16.05 - Domestic Steel

The Dormitory Authority is required to comply with all provisions of Title 4 of Article 9 of the NYS Public Authorities Law, including NYS Public Authorities Law Section 2603-a, and in accordance therewith, if the amount of the Contract exceeds \$100,000, the Owner requires that all structural steel, reinforcing steel or other major steel items to be incorporated in to the Work of the Contract be produced or made in whole or substantial part in the United States, its territories, or possessions. The Owner, in its discretion, may grant waivers of this requirement in accordance with NYS Public Authorities Law Section 2603-a. Contractor must request a waiver in writing and obtain a written waiver of this requirement from Owner before using in performance of the Contract any steel not produced or made in whole or substantial part in the United States, its territories, or possessions.

Section 16.06 - Failure to Comply with Article 16

The Owner will not be responsible for any Claim arising from compliance with this General Conditions Article 16.

ARTICLE 17—RECORDS/AUDITS/INVESTIGATIONS/ETHICS

Section 17.01 – Preparation of Records/Owner's Right to Inspect Records and to Audit

The Contractor shall, concurrently with performance of the Contract, prepare substantiating records regarding performance of the Contract, including records of Subcontractors and material suppliers. General

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Conditions Section 17.03 describes the records and other data to be maintained by Contractor, Subcontractors, and material suppliers. The Contractor shall maintain and keep, for a period of at least six (6) years after the date of payment of the final Application for Payment, all records and other data relating to the Work, including records of Subcontractors and material suppliers. Upon seven (7) calendar days' written notice, the Contractor shall make its records (including records of Subcontractors and material suppliers) available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Contractor's records (including records of Subcontractors and material suppliers) at the Owner's reasonable expense, within adequate workspace at the Contractor's facilities. The Owner shall also have the right to have Owner or its authorized representative audit all records and other data of the Contractor, Subcontractors and material suppliers relating to the Work.

Section 17.02- False Statements/Information/Disclosure

Failure to comply with General Conditions Section 17.01, providing False Representations, false statements or inaccurate information submitted in accordance with Contract Documents, including but not limited to, an Application for Payment, a Claim or a Change Order, or False Representations, false statements, or inaccurate information submitted to the Owner, or a determination that the Contractor participated in the kick-back of wages may result in one or more of the following actions:

- A. Termination of the Contract for cause, pursuant to General Conditions Section 11.01.
- B. Rejection of future bids or disapproval of a contract or subcontract.
- C. Withholding of payments.
- D. Criminal prosecution.
- E. Civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
- F. Rejection of a Claim or Change Order.
- G. Deduction of the Owner's cost of an audit from the Contract amount.

Section 17.03 - Owner's Right to Conduct Investigations

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Owner.
- B. The Contractor shall grant the Owner the right to examine all books, records, files, accounts, computer records, documents, and correspondence, including electronically-stored information, in the possession or control of the Contractor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the Contractor, relating to the Contract. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; daily reports of Work completed that day; schedules; reports; audits; vendor qualification records; original estimate files; Change Order/Contract Amendment estimate files; detailed worksheets; Subcontractor, consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns; and the supporting documentation for the aforesaid books and records.

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- C. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Contractor shall execute such documents, if any, as are necessary to give the Owner access to Contract-related books, documents, or records, which are, in whole or part, under control of the Contractor but not currently in the Contractor's physical possession. The Contractor shall not enter in to any agreement with a Subcontractor, consultant, or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the Owner. The Contractor shall assist the Owner in obtaining access to past and present Subcontractor, consultant, and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.
- D. The Contractor shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Contractor, for purposes of the Contract.
- E. The Contractor shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter in to with any and all Subcontractors, consultants, and suppliers, in connection with the Contract, a right-to-audit clause in favor of the Owner conferring rights and powers of the type outlined in this General Conditions Section 17.03. The Contractor shall not enter in to any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Contractor shall not make any payments to a Subcontractor, consultant, or supplier from whom the Contractor has failed to obtain and supply to the Owner complete, accurate, and truthful information in compliance with a request from the Owner to the Contractor.
- F. Any violation of the provisions of this General Conditions Article 17 shall justify termination of this Contract and may result in the Owner's rejection of the Contractor's bids or proposals for future contracts and the deduction of the Owner's cost of an audit from the Contract amount.

Section 17.04 - Disclosure of Criminal Investigation

- A. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor, or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), are subpoenaed or questioned in connection with any business-related criminal investigation, whether or not the owner, partner, director, officer or employee is, or is believed to be, the subject or target of such investigation, or is notified or otherwise learns that any owner, partner, director, officer or employee of the Contractor or its affiliated companies is under investigation for an alleged business-related violation of criminal law, or in the event that any premises or records of the Contractor are searched pursuant to a search warrant seeking evidence of a crime or crimes, unless otherwise precluded by law enforcement authorities.
- B. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), the firm itself, or one of its affiliated companies is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal law, unless otherwise precluded by law enforcement authorities.
- C. In the event that any owner, partner, director, officer, or employee of the Contractor is indicted or charged in an accusatory instrument for any business-related violation of local, state, or federal criminal law relating to this Contract or any other Dormitory Authority contract, the Owner may require the Contractor to remove said owner, partner, director, officer, or employee from any direct involvement

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in the affairs of the Contractor as it relates to this Contract and all other Dormitory Authority contracts until the criminal matter is resolved. In the event that any owner, partner, director, officer, or employee of the Contractor is convicted of a business-related violation of local, state, or federal criminal law, the Owner may require the Contractor to permanently remove said individual from any direct involvement in the affairs of this Contract and all other Dormitory Authority contracts.

- D. In the event that the Contractor or any owner, partner, director, officer, or employee of the Contractor is convicted of a business-related violation of local, state, or federal criminal law, the Owner may schedule a hearing with the Contractor to determine the Contractor's responsibility to continue work under this Contract and other Dormitory Authority contracts. Following this hearing, the Owner may, at its sole discretion, take one or more of the following actions:
1. Terminate this Contract.
 2. Require the Contractor, at its own expense, to hire an independent private-sector inspector general to monitor its activities, institute procedures and conduct internal inquiries, in a manner prescribed by the Owner.
 3. Increase retainage to an amount not to exceed ten percent (10%).
 4. Take any other remedial action deemed appropriate.

Section 17.05 - Anti-Riot Provisions

- A. The Contractor agrees that no part of the Contract funds shall be used to make payments, give assistance, or supply services, in any form, to any individual convicted in any federal, state, or local court of competent jurisdiction for inciting, promoting, or carrying on a riot, or engaging in any group activity resulting in material damage to property or injury to persons found to be in violation of federal, state or local laws designed to protect persons or property.
- B. The Contractor and each Subcontractor shall notify their employees of all rules and regulations adopted pursuant to Article 129-A of the NYS Education Law. The Contractor shall post notices containing the text of the aforementioned rules and regulations at the Site.

Section 17.06 - Ethical Conduct

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the NYS Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector, or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory, or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the NYS Public Officers Law expressly prohibits the Contractor, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties or was intended as a reward for the employee's official action.

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1. In addition to the prohibition of Section 73(5) of the NYS Public Officers Law, the Dormitory Authority has a “zero tolerance” policy with respect to the solicitation, acceptance, or receipt of gifts from disqualified sources. Therefore, the Contractor and its agents shall refrain from offering or giving anything of value to an employee of the Owner. Employees of the Owner may not solicit any gift, gratuity, stipend, or thing of value from the Contractor or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.
- C. To promote a working relationship with the Owner based on ethical business practices, the Contractor is expected to:
1. Furnish all goods, materials and services to the Owner as contractually required and specified.
 2. Submit complete and accurate reports to the Owner and its representatives as required.
 3. Not seek, solicit, demand or accept any information, verbal or written, from the Owner or its representatives that provides an unfair advantage over a competitor.
 4. Not engage in any activity or course of conduct that restricts open and fair competition on Owner-related projects and transactions.
 5. Not engage in any course of conduct with Owner employees or its representatives that constitutes a conflict of interest, in fact or in appearance.
 6. Not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the Contractor to advance and support ethical business conduct and practices among its directors, officers, and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the Contractor may employ relatives of Owner employees, the Owner shall be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Owner reserves the right to request that the Contractor modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The Contractor may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of two years following their separation from service with the Owner. In addition, former employees of the Owner are subject to a “lifetime bar” from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Owner.
- G. The Contractor agrees to notify the Owner’s Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Owner that is inconsistent with the contents of this General Conditions Section 17.06.
- H. Any violation of this General Conditions Section 17.06 shall justify termination of this Contract and may result in Owner’s rejection of the Contractor’s bids or proposals for future agreements.

Section 17.07 – Continuing Integrity

- A. Contractor shall at all times during the Contract term remain responsible. Contractor agrees, if requested by the President of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. The President of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. Notwithstanding any other provision of this Contract, upon written notice to Contractor, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the President of Owner or his or her designee at Contractor's expense where Contractor is determined by the President of Owner or his or her designee to be non-responsible. In such event, the President of Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

Section 17.08 – Iran Divestment

- A. By entering in to this Contract, Contractor certifies, under the penalties of perjury, that Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law. Contractor further certifies that Contractor will not utilize on this Contract any subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law.
- B. During this Contract, should Owner receive information that a person (as defined in NYS State Finance Law §165-a) is in violation of the above-referenced certifications, Owner 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 Owner shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

ARTICLE 18 -- 2005 PROCUREMENT LOBBYING LAW

Section 18.01 - Procurement Lobbying Law

Bidders shall affirm their understanding of and agree to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with NYS State Finance Law § 139-k (5), disclose prior non-responsibility determinations under NYS State Finance Law § 139-j, and shall certify that the information they provide with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate. Contractor hereby reaffirms its understanding of an agreement to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), re-certifies its compliance with NYS State Finance Law § 139-k (5) and recertifies that the information it provided with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate.

Section 18.02 - Contractor's Certifications

For any contract \$15,000 or more each Contractor shall submit, with its bid, on the form provided herewith, the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k. The information contained in the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k will serve as an informational resource to aid the Owner in making an award determination.

Section 18.03 - Termination Provisions

The Owner reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with NYS State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its right pursuant to General Conditions Section 11.01 – Termination for Cause.

ARTICLE 19 -- EXECUTIVE ORDER No. 125

Section 19.01 - Determination of Contractor Responsibility

In order to assist the Owner in determining the responsibility and reliability of the lowest bidder for the Contract and to effectuate the directives of Executive Order No. 125, dated May 22, 1989, (9 NYCRR §4.125) the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among contracting agencies.

Section 19.02 – NYS Vendor Responsibility Questionnaire

- A. For any Contract valued at \$10,000 or more, the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Contractor or for any Subcontractor shall be submitted as requested by the Owner. Owner may request an updated NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Contractor or for any Subcontractor as often as the Owner, in its sole and exclusive discretion, deems necessary to carry out the Owner’s duties and responsibilities under this Contract.
- B. The information contained in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) will serve as an informational resource to aid the Owner in making an award determination and in making other determinations for this Contract.

ARTICLE 20 -- OPPORTUNITY PROGRAMS

Section 20.01 - General Provisions

- A. The Dormitory Authority is required to implement the provisions of NYS Executive Law Article 15-A and Parts 140 through 145 of Title 5 of the NYCRR for all State contracts (as defined in such statute and regulations) with a value:
 - 1. in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing;
or
 - 2. in excess of \$100,000 for real property renovations and construction.

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- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS, and the regulations promulgated thereunder. These requirements include: equal employment opportunities for minority group members and women (EEO), and contracting opportunities for NYS certified minority and women-owned business enterprises (MWBES). The Contractor's demonstration of good faith efforts pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Executive Law Article 15 (the Human Rights Law) and other applicable federal, state and local laws.
- C. Failure to comply with all requirements in this General Conditions Article 20 may result in a finding of non-responsiveness, non-responsibility, breach of contract or any combination of the foregoing leading to the assessment of liquidated damages pursuant to General Conditions Section 20.06 and other remedies available to the Owner pursuant to the Contract and applicable law.

Section 20.02 – Equal Employment Opportunity (EEO)

- A. The provisions of NYS Executive Law Article 15-A, and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. The Contractor shall:
 - 1. Undertake or continue, and ensure each Subcontractor shall undertake or continue, existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO 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.
 - 2. Submit an EEO policy statement to the Owner within seventy-two (72) hours after the date of the Letter of Intent to award the Contract.
 - 3. Adopt a model EEO policy statement and require each Subcontractor to adopt a model EEO policy statement if the Contractor or Subcontractor does not have an existing EEO policy statement, and if the Owner requires the Contractor or Subcontractor to adopt a model EEO policy statement.
 - 4. Have a Contractor's EEO policy statement that shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs 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.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment

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opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
5. The Contractor shall include the provisions of paragraphs a. through c. of this General Conditions Section 20.02 B. 4. and Subdivision E of this General Conditions Section 20.02, which provides for relevant provisions of the Human Rights Law, in every Subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.
- C. To ensure compliance with this General Conditions Section 20.02, the Contractor shall submit a staffing plan, on a form provided by Owner, 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. The Contractor shall complete the staffing plan form and submit it when directed by Owner.
 - D. To ensure continuous compliance with General Conditions Section 20.02:
 1. The Contractor shall submit a Workforce Utilization Report, and shall require each Subcontractor to submit a Workforce Utilization Report, in such form as shall be required by the Owner on a monthly basis during the term of the Contract.
 2. Separate forms shall be completed by the Contractor and each Subcontractor.
 3. Pursuant to Executive Order 162 (9 NYCRR 8.162) dated January 9, 2017, the Contractor and each Subcontractor are also required to report the gross wages paid to each of their employees for the Work performed by such employees on the Contract on a monthly basis.
 - E. The Contractor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and each Subcontractor 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 NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Section 20.03 – Opportunities for Minority and Women-Owned Business Enterprises (MWBE)

- A. The Owner has established goals for the participation in this Contract of NYS certified minority-owned business enterprises (“MBE”) and NYS certified women-owned business enterprises (“WBE” and collectively with MBEs, “MWBE”). The goals (collectively, MWBE Contract Goals) are set forth in the Information for Bidders Section 8.0 – Opportunity Programs Requirements.
- B. The Contractor represents and warrants that, as a condition for award of the Contract, the Contractor has submitted a Statewide Utilization Management Plan (“SUMP”) via the NYS Contract System

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(NYSCS) which lists all proposed Subcontractors including an identification of the NYS certified MWBE subcontractors and suppliers the Contractor intends to use to perform the Work of the Contract and to achieve the MWBE Contract Goals established in the Contract Documents. In addition, or alternatively, Contractor may have submitted a request for a waiver. Prior to award of the Contract, the Owner approved Contractor's plan to achieve the MWBE Contract Goals established in the Contract Documents (MWBE Utilization Plan) to the extent the Owner did not approve Contractor's request for a waiver of part or all of the MWBE Contract Goals. Owner approval of the MWBE Utilization Plan approves a Subcontractor only for the purpose of the MWBE Utilization Plan.

- C. Contractor agrees to adhere to the MWBE Utilization Plan in the performance of the Contract. Contractor shall not change the Utilization Plan without the prior written approval of the Owner. Contractor further agrees that failure to adhere to the MWBE Utilization Plan shall constitute a material breach of the Contract and upon such breach, the Owner shall be entitled to any remedy provided in the Contract or by law, including but not limited to a finding that the Contractor is non-responsible.
- D. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1 may be applied towards the achievement of the applicable MWBE Contract Goal. The portion of a subcontract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the subcontract. The portion of a subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. The Owner will audit the Contractor's efforts to achieve the MWBE Contract Goals through the NYSCS.

Section 20.04 - Good Faith Efforts

- A. The Contractor shall document good faith efforts pursuant to 5 NYCRR § 142.5 to provide meaningful participation by MWBEs as Subcontractors (which includes material suppliers, other vendors, and others; see definition of Subcontractor in General Conditions Article 1 - Definitions) in the performance of the Contract, to comply with the requirements of the Contract and to enable the Owner to determine compliance with the provisions of this General Conditions Article 20. Guidelines for documentation of good faith efforts are at <http://www.dasny.org/tools-forms/forms> under MWSBE.
- B. If the Contractor fails to adequately document good faith efforts, it may result in a finding of non-compliance.

Section 20.05 - Waivers

- A. If the Contractor, after making good faith efforts satisfactory to the Owner, is unable to achieve the MWBE Contract Goals, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Owner. The request for a waiver must be supported by evidence of the good faith efforts by the Contractor to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- B. If the Owner, upon review of the SUMP, the MWBE Utilization Plan, the NYSCS and any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Owner may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice to deficiency within

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seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

Section 20.06 – Damages - MWBE Participation

- A. If the Owner determines that the Contractor is not in compliance with the requirements of this General Conditions Article 20 and the Contractor refuses to comply with the requirements of this General Conditions Article 20, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals, then: (1) the Contractor shall be obligated to pay the Owner liquidated damages; or (2) the Contractor shall be obligated to pay the Owner other appropriate damages; or (3) the Owner shall receive one or more other appropriate remedies, unless the Owner elects to pursue its remedies under NYS Executive Law Section 316. If the Owner declines to pursue its remedies under NYS Executive Law Section 316, the Owner may elect to pursue one or more of liquidated damages, other appropriate damages, and one or more other appropriate remedies.
- B. If the Owner decides to assess liquidated damages, the Contractor shall be obligated to pay to the Owner liquidated damages in an amount equal to the difference between all sums identified for payment to MWBEs if the Contractor had achieved the MWBE Contract Goals and all sums actually paid to MWBEs for performance of Work under the Contract. If such liquidated damages have not been withheld by the Owner, the Contractor shall pay such liquidated damages to the Owner within sixty (60) days after they are assessed. provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR §142.2, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process. The liquidated damages are intended to compensate the Owner only for the Owner’s damage if the Owner determines that the Contractor is not in compliance with the requirements of General Conditions Sections 20.03, 20.04 and 20.05 and the Contractor refuses to comply with the requirements of General Conditions Sections 20.03, 20.04 and 20.05, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals. In addition, the Contractor shall be liable to the Owner to the fullest extent permitted by law for:
1. whatever other appropriate damages the Owner may incur; or
 2. any other appropriate remedy to which the Owner may be entitled as a result of the Contractor’s refusal to comply with the requirements of this General Conditions Article 20 outside the requirements of General Conditions Sections 20.03, 20.04, 20.05 and the MWBE Contract Goals.

Other appropriate damages include, but are not limited to, the expenses for personnel, supplies and overhead incurred by the Owner to administer and enforce the requirements of this General Conditions Article 20 other than the requirements of General Conditions Sections 20.03, 20.04, 20.05 and the MWBE Contract Goals.

Section 20.07 – Reporting to Owner

The Contractor shall complete the reports and submit as indicated to establish and update EEO requirements during the life of the Contract. Reports not submitted at such time shall be cause for the Owner to delay payment to the Contractor. The listed reports are a requirement of the Contract and copies are included in the Contract Documents and template forms are also available on the Dormitory Authority’s web site at, <http://www.dasny.org/tools-forms/forms>, under MWSBE.

ARTICLE 21- SERVICE-DISABLED VETERAN OWNED BUSINESSES

Section 21.01 – General Provisions

Article 17-B of the NYS Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran – Owned Businesses (SDVOB), thereby further integrating such businesses in to New York State’s economy. The Dormitory Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Dormitory Authority contracts.

Section 21.02 – Contract with Goals

- A. If the Information for Bidders established an overall goal for SDVOB participation in this Contract and Contractor submitted an SDVOB Utilization Plan that was accepted by the Dormitory Authority, Contractor shall follow the accepted SDVOB Utilization Plan. Contractor, by award of the Contract, certified that Contractor shall follow the submitted and accepted SDVOB Utilization Plan for the performance of SDVOBs on the Contract.
- B. Contractor shall not change the accepted SDVOB Utilization Plan without the prior written consent of the Dormitory Authority. Any modifications or changes to the accepted SDVOB Utilization Plan after award of the Contract to the Contractor shall be reported to the Dormitory Authority on a revised SDVOB Utilization Plan. As part of a revised SDVOB Utilization Plan, the Contractor may request a partial or total waiver of the goal for SDVOB participation but such request must be made prior to submission of the Application for Payment for the final payment on the Contract. Contractor shall make and shall document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. The revised SDVOB Utilization Plan is not effective unless and until it is accepted by the Dormitory Authority. If the revised SDVOB Utilization Plan is not accepted by the Dormitory Authority, the Dormitory Authority shall issue a notice of deficiency and the Contractor shall proceed as set forth in paragraph D of this General Conditions Section 21.02
- C. Contractor shall report to the Dormitory Authority Monthly SDVOB Contractor Compliance during the Contract documenting the preceding month’s progress towards implementing the accepted SDVOB Utilization Plan and achieving the SDVOB goals for the Contract. This information shall be submitted to the Dormitory Authority in the manner and at the times directed by the Dormitory Authority.
- D. If the Dormitory Authority, upon review of the SDVOB Utilization Plan and the Monthly SDVOB Contractor Compliance reports determines that the Contractor is failing or refusing to comply with the Contract SDVOB goals and no waiver has been issued with respect to such non-compliance, the Dormitory Authority may issue a notice of deficiency to the Contractor. The Contractor shall 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 the Contract SDVOB goals.
- E. Contractor shall make and shall document its good faith efforts to utilize SDVOBs in the performance of the Contract. Evidence of required good faith efforts includes but is not limited to:
 - 1. Copies of solicitations to SDVOBs and any responses thereto;
 - 2. Explanation of the specific reason(s) each SDVOB responding to a Contractor’s solicitation was not selected;

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3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Dormitory Authority with certified SDVOBs which the Dormitory Authority determined were capable of fulfilling the SDVOB goals in the Contract;
 4. Information describing the specific steps undertaken to reasonably structure the scope of subcontracts and material orders for the purpose of subcontracting with, or obtaining materials from, SDVOBs;
 5. Other information relevant to the waiver request.
- F. Contractor's failure to use SDVOBs in accordance with the accepted SDVOB Utilization Plan or any accepted revised SDVOB Utilization Plan shall be a material breach of the Contract and upon such breach, the Dormitory Authority shall be entitled to any remedy provided in the Contract, by law or regulation or at law or in equity, including but not limited to a finding the Contractor is non-responsible. If the Dormitory Authority finds the Contractor willfully and intentionally fails to comply with the Contract SDVOB goals, the Contractor shall pay damages to the Dormitory Authority as set forth in 9 NYCRR § 252.2(s).

Section 21.03 – Contract with No Goals

If the Information for Bidders does not establish an overall goal for SDVOB participation in this Contract, Contractors are still strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract in recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State. The Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs in performance of the Contract as Subcontractors.

SUPPLEMENTAL GENERAL CONDITIONS
TO
GENERAL CONDITIONS FOR CONSTRUCTION, DATED MAY 1, 2018
Job Order Contracting

Section 3 Overview

The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701) (hereinafter referred to as “Section 3”). Section 3 requires that to the greatest extent feasible (“GEF”) opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located. All information pertaining to Section 3 requirements must be included in subcontracts entered into between Contractor and any subcontractors. Contractor is required to undertake GEF efforts, and is also required to cause any subcontractors to undertake GEF efforts.

Included in this section are:

- GOSR Section 3 Plan
- GOSR Section 3 Greatest Extent Feasible Guidelines
- GOSR Good Faith Efforts Guidelines

Contractor, and any Subcontractors working for Contractor, must be in full compliance with these requirements.

Failure to comply with the requirement to make GEF efforts, as determined by either GOSR or DASNY, may result in the following:

- An onsite integrity monitor may be required at Contractor’s expense to ensure further compliance with GEF efforts;
- A monetary penalty may be imposed in an amount between the legally applicable Section 3 goals and the actual achieved Section 3 participation;
- Future payments or contract awards may be tolled until full compliance is achieved; and
- To the extent any penalty or fine is assessed against DASNY, or payment and/or project funding is withheld from DASNY, by any party, relating to failure to comply with Section 3 or making GEF efforts to comply with same, and it is determined by DASNY that said failure is due to the fault of Contractor or one of Contractor’s subcontractors, then DASNY may, at its sole discretion, seek reimbursement from Contractor in an amount sufficient to make DASNY whole. This may include, but is not limited to, withholding payment in a sufficient amount from Contractor.

Elation Overview - Use of Elation Systems for Governor's Office of Storm Recover Projects (GOSR)

In addition to the usual DASNY requirements to enter subcontracts and payments into the New York State Contract System, with Governor's Office of Storm Recover Projects (GOSR) there is an additional requirement to register and regularly update certified payroll and quarterly compliance reports through the Elation system. There is an Elation support team at GOSR to assist contractors as well as online trainings available.

The first step is to Register with the Elation Systems www.elationsys.com to establish an account. Once the contractor has registered for its Elation Systems Account and completed the activation process, the contractor will need to request a digital signature. It is suggested that contractors assign multiple users for continuity and to ensure payments aren't delayed should its Elation user be out. Each quarter, contractors/subcontractors are required to complete and submit quarterly reports to demonstrate compliance with U.S. Department of Housing and Urban Development (HUD) requirements for the Community Development Block Grant Disaster Recovery Program (CDBG-DR) so that potential payments will not be delayed. **GOSR will delay payments if contractors and subcontractors fail to upload their certified payroll on a regular basis (weekly preferred but monthly required at minimum) and quarterly compliance reports. Contractors and subcontractors need to be set up in Elation and upload certified payrolls before receiving their first payment, so Elation log-ins and training should be set up and completed in a timely manner so as to not delay payments.**

Quarterly reporting requirements (which differ somewhat for prime and subcontractors) include Section 3 reporting (on workforce and subcontracting), PROC-5: Workforce Employment Utilization reporting, ADM-136: Monthly Employment Utilization reporting (submitted quarterly), ADM-123: Cumulative Payment reporting, and HUD-2516: Contract and Subcontract Activity reporting. While the Elation system can automatically generate portions of some reports, there is information that the contractor/subcontractor must upload and check is correct in the system before generating the reports (example: current employees working on GOSR projects including demographic information). Some reporting is fully automated as it is uploaded from the New York State Contract System. A summary of the report requirements are listed on page 52 of the Elation manual located at: www.dasny.org/toolsforms/construction-resources/Elation_How_To_VENDOR_GUIDE.

Wage Rates Overview

Contractor, and any Subcontractors working for Contractor, are required to be in full compliance with the Davis-Bacon Act as well as the New York State Labor Law, including, but not limited to, compliance with provisions relating to payment of applicable prevailing wage rates.

MWBE Overview

Contractor, and any Subcontractors working for Contractor, are required to be in full compliance with DASNY and GOSR M/WBE requirements.

Indemnification

The Contractor shall defend, indemnify and save harmless DASNY, the State of New York, New York State Housing Trust Fund Corporation and the Participant, when applicable, their respective

representatives, construction manager, servants and employees from any and all claims of subcontractors, material men, or the employees thereof, arising out of or in connection with the work.

Insurance

Additional insurance submittals may be required, at the Owner's discretion, to provide beneficiary specific coverage for Projects for the Governor's Office of Storm Recovery (GOSR).

End of Supplemental General Conditions