

08/01/17

DORMITORY AUTHORITY
Background Check Services
Term Contract No.

SAMPLE CONTRACT

A Contract is hereby made by and between the **DORMITORY AUTHORITY - State of New York** (“**DASNY**”), having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964, hereinafter referred to as the OWNER, and _____, whose office is located at _____ hereinafter referred to as the CONSULTANT; and

WHEREAS, the OWNER and the CONSULTANT have agreed to provide pre-employment and/or employee background checks and screening services which shall hereinafter be referred to as the “Work;” and

WHEREAS, the OWNER and the CONSULTANT have agreed upon a pricing schedule to be utilized in conjunction with the Work to calculate compensation for services requested and authorized under this CONTRACT;

NOW, THEREFORE, the OWNER and the CONSULTANT hereby mutually covenant and agree as follows:

ARTICLE I: TERM OF CONTRACT

The term of this Term Contract for Professional Services shall be from _____ through _____, except that the CONSULTANT shall complete any and all work issued under this Term Contract for Professional Services even though the Work performed may extend past the end date of the term of this Term Contract for Professional Services. The OWNER may, at its sole discretion, extend the term of this Term Contract for Professional Services. The CONSULTANT shall continue to render services for the Work issued, within the term of this Term Contract for Professional Services and any extension(s), until the completion of the Work unless the OWNER provides written notice otherwise.

ARTICLE II: ADDITIONAL SERVICES

The OWNER reserves the right to direct the CONSULTANT to provide Additional Services and the CONSULTANT shall provide said Additional Services when so directed. Payment for said Additional Services shall be in accordance with Article V.2.

ARTICLE III: EXTRA WORK

If the CONSULTANT believes that any work it has been directed to perform is beyond the scope of this Contract and constitutes Extra Work, it shall promptly so notify the OWNER in writing. The OWNER shall determine whether or not the Work is in fact beyond the scope of this Contract and is considered Extra Work. If the OWNER determines that the Work is Extra Work, this Contract shall be modified to equitably reflect the cost of said Extra Work. Payment shall be made in accordance with Article V.2.

ARTICLE IV: Reserved

ARTICLE V – PROVISION FOR PAYMENT

Maximum Amount Payable

The OWNER will compensate the CONSULTANT Contract Price for all Required Services and Extra Services if necessary. Compensation for each item of service shall be established on a Lump Sum (LS) or Actual Expense (AE) basis, not to exceed the total amount of each Purchase Order. Each Purchase Order shall contain a detailed listing of the specific services to be performed.

1. The OWNER shall compensate the CONSULTANT for Required Services rendered for each Purchase Order in one or more of the following ways:

Negotiated Basis:

In accordance with the Provisions for Payment contained in each Purchase Order issued under this Term Contract for Professional Services.

Unit Cost and Time Basis:

The OWNER shall pay the CONSULTANT for time expended, at the rates and unit costs set forth in the CONSULTANT's Summary of Cost, attached hereto as **Appendix "B"**, and in accordance with the Provisions for Payment contained in each Purchase Order issued under this Term Contract for Professional Services.

2. Payment for Additional Services and Extra Work shall be on the basis of one of the following methods as determined by the OWNER:

- (i) Negotiated Lump Sum; or
- (ii) Actual Cost.

The OWNER and the CONSULTANT shall agree in writing prior to the CONSULTANT's performance of Extra Services whether the Extra Services will be performed on a negotiated lump-sum basis or an hourly-rate basis. The OWNER shall compensate the CONSULTANT for Extra Services

- (i) if rendered on a lump sum basis, in an amount mutually agreed to in writing by the OWNER and the CONSULTANT prior to the performance of such services; and
- (ii) if rendered on an hourly-rate basis, at the agreed-upon rates contained in Appendix "C", entitled **APPROVED CLASSIFICATIONS AND RATES** which is attached to and made a part hereof, and inclusive of the CONSULTANT's overhead and profit.

ARTICLE VI: WITHHOLDING OF PAYMENTS

The OWNER may withhold from the CONSULTANT any part of any payment as may, in the judgment of the OWNER, be necessary:

- to assure payment of just claims of any persons supplying labor or materials for the Work;
- to assure payment of fines and damages that may be imposed on the CONSULTANT pursuant to the provisions of this Contract.

ARTICLE VII: FINAL PAYMENT AND RELEASE

Final payment shall be made to the CONSULTANT upon satisfactory completion and acceptance by the OWNER of all services required, by the CONSULTANT pursuant to this Contract, or all services performed

prior to the termination of said Contract if so terminated and upon submission of a certification that all subconsultants/subcontractors, as applicable, have been paid their full and agreed compensation.

Acceptance by the CONSULTANT of final payment hereunder shall operate as, and shall be, a release to the OWNER from all claims and liability to the CONSULTANT and its successors, legal representatives, and assigns for anything done or furnished under or arising out of the provisions of this Contract except as provided for in Article X of this Contract. No payment, final or otherwise, shall release the CONSULTANT from any obligations under this Contract.

ARTICLE VIII: OWNER'S PROCEDURE

The CONSULTANT agrees to comply with all procedural requirements of the OWNER reasonably inferable from the Scope of Services and Scope of Work.

ARTICLE IX: INSURANCE

A. The CONSULTANT shall purchase at its own expense and maintain until final acceptance of the Work by the OWNER, from a company or companies licensed or authorized to do business in New York State, or otherwise acceptable to the OWNER, insurance policies containing the following types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Term Contract for Professional services by the CONSULTANT or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The CONSULTANT shall not commence work under the Contract until the CONSULTANT has obtained all the insurance required under this Article:

1. Workers' Compensation Law Requirements
 - b. Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of one million Dollars (\$1,000,000) as evidenced by **ONE** of the following (**ACORD certificates are not acceptable**):
 - (1) C-105.2 (September 2007, or most current version) - Certificate of Workers Compensation Insurance. The insurance carrier will provide a completed form as evidence of in-force coverage.
 - (2) U-26.3-Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund will provide a completed form as evidence of in-force coverage.
 - (3) GSI-105.2/SI-12-Certificate of Workers Compensation Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator will provide a completed form.
 - c. Disability Benefits
 - (1) DB-120.1 (May 2006, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law. The insurance carrier will provide a completed form as evidence of in-force coverage.
 - (2) DB-155-Certificate of Disability Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.

- (3) 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 OWNER will *not* accept this as an exemption from providing Workers' Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at www.wcb.state.ny.us/content/main/forms.htm. The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contracts.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

2. Commercial General Liability which names the Dormitory Authority-State of New York and the State of New York with per-occurrence and aggregate limits of not less than one million Dollars (\$1,000,000.00). The CONSULTANT shall list any deductible or SIR and provide a copy of the endorsement.

Coverage shall include Blanket Contractual liability covering all indemnity agreements, including all indemnity obligations contained in this Contract, and Products Liability and Completed Operations Aggregate limit of \$1,000,000 per occurrence and aggregate for a term of no less than three (3) years.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Policy or policies must be written or endorsed to be primary and non-contributory as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by the OWNER. Any other insurance maintained by the OWNER shall be excess of and shall not contribute with the CONSULTANT's or its subconsultant's insurance, regardless of the "other insurance" clause contained in the OWNER's own policy of insurance.

3. Commercial Comprehensive Automobile Liability and Property Damage covering all owned, leased, hired and non-owned vehicles used in connection with the Work with combined single limits of not less than one million Dollars (\$1,000,000.00) each person/each accident for bodily injury and property damage.
4. Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability.
5. Professional Liability, with limits of not less than one million dollars (\$1,000,000) each claim/\$1,000,000 annual aggregate, subject to a deductible or self-insured retention of not more than one hundred thousand Dollars (\$100,000) per claim or an amount acceptable to the OWNER.

The CONSULTANT or its subconsultant, as applicable, shall purchase at its sole expense Extended Discovery Clause coverage of up to three (3) years after the Work is completed if coverage is canceled or not renewed. Written proof of this extended reporting period must be provided to the OWNER prior to expiration or cancellation.

- B. Prior to award of Contract, two Certificates of Insurance, must be submitted and approved by the OWNER prior to the commencement of the Work. It is further agreed that if the insurance policy's term stated on the certificate expires, it is the responsibility of the CONSULTANT to provide an updated certificate of insurance to the Contracts Unit 30 days prior to expiration of

the insurance. Non-compliance to this request may result in the OWNER withholding payment to the CONSULTANT. Certificates shall provide 30 days written notice to the OWNER prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. Upon request, the CONSULTANT shall furnish the OWNER with certified copies of each policy.

Certificates are to be forwarded to:

Contracts Unit
DASNY
515 Broadway
Albany, New York 12207-2964

Certificate(s) of Insurance, when submitted to the OWNER, constitute a warranty by the CONSULTANT that the insurance coverage described is in effect for the policy term shown and will provide insurance for the life of the contract.

Should the CONSULTANT engage a subconsultant, the same conditions as are applicable to the CONSULTANT under these insurance requirements shall apply to each subconsultant of every tier. Proof thereof shall be supplied to the OWNER's Contracts Unit.

- C. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER.
- D. Should the CONSULTANT fail to provide or maintain any insurance required by this contract, the OWNER may, after providing written notice to the CONSULTANT, purchase insurance complying with the requirements of this Article and charge back such purchase to the CONSULTANT.
- E. 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 CONSULTANT shall immediately cease work. The CONSULTANT shall not resume Work until authorized to do so by the OWNER. Any delay or time lost as a result of the CONSULTANT not having insurance required by this Article shall not give rise to a claim against the OWNER.
- F. Notwithstanding any other provision in this Article, the OWNER may require the CONSULTANT to provide, at the expense of the OWNER, any other form or limit of insurance necessary to secure the interests of the OWNER.
- G. The CONSULTANT 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, borrowed or rented by the CONSULTANT. The requirement to secure and maintain such insurance is solely for the benefit of the CONSULTANT. Failure of the CONSULTANT to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.
- H. Neither the procurement nor the maintenance of any type of insurance by the OWNER, the CONSULTANT, its subconsultants, shall in any way be construed or deemed to limit, discharge, waive or release the CONSULTANT from any of the obligations or risks accepted by the CONSULTANT or to be a limitation on the nature or extent of said obligations and risks of the CONSULTANT.
- I. This Contract may, at the sole option of the OWNER, be declared void and of no effect if the CONSULTANT or any subconsultant fails to comply with the provisions of this Article.

- J. The CONSULTANT and its subconsultants 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.

ARTICLE X: GENERAL INDEMNITY

To the fullest extent permitted by law, the CONSULTANT shall defend if requested, protect, indemnify and hold harmless the OWNER and the OWNER's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees, interest and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought and regardless of the legal theories upon which premised, including, but not limited to those arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the OWNER or the OWNER's Related Parties allegedly or actually arising out of or resulting from any negligent act, or any intentional misconduct (i) of the CONSULTANT; or (ii) of the CONSULTANT's consultants; or (iii) of the agents, employees or servants of the CONSULTANT or its consultants. The CONSULTANT shall also indemnify the OWNER for breach of contract not related to professional services.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made that allocates responsibility to the OWNER or the OWNER's related parties, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CONSULTANT the percentage of uninsured defense costs that the CONSULTANT incurred based upon an apportionment of the OWNER's allocated responsibility.

A. **Non-Exclusivity of OWNER's Remedies**

The OWNER's selection of one or more remedies for breach of this Term Contract for Professional Services shall not limit the OWNER's right to invoke any other remedy available to the OWNER under this Term Contract for Professional Services or by law.

B. **Waiver of Damages**

The CONSULTANT shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

C. **Interest**

The OWNER is entitled to interest on all amounts due from the CONSULTANT that remain unpaid thirty (30) calendar days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Article V above.

ARTICLE XI: OWNER'S RIGHT TO AUDIT AND INSPECT RECORDS

The CONSULTANT shall maintain, and shall keep for a period of six years after the completion of the Work, all records and other data relating to the Work, including records of consultants and subconsultants, as applicable. The OWNER or the OWNER's Representative shall have the right to inspect and audit all records and other data of the CONSULTANT and its consultants and subconsultants relating to the Work.

ARTICLE XII: ASSIGNMENT

The CONSULTANT shall not assign the Contract in whole or in part without prior written consent of the OWNER; however, the OWNER may assign the Contract in whole or in part without prior written consent of the CONSULTANT.

ARTICLE XIII: APPENDIX "E" ADDITIONAL ITEMS

Attached to and made a part hereof is **Appendix "E"**, entitled **ADDITIONAL ITEMS**.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the OWNER has executed this Contract on the _____
day of _____ 20__.

Dormitory Authority – State of New York
515 Broadway
Albany, NY 12207-2964

By _____

Title _____

Date _____

IN WITNESS WHEREOF, the Consultant has caused this Contract to be signed by its duly
authorized officer on the _____ day of _____ 20__.

Name of Firm
Address

By _____ 1

Title _____

Date _____

- 1 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 an authorized partner.
- If a **general partnership**, signer must be a partner.
- If a **sole proprietorship**, signer must be the owner.

ACKNOWLEDGMENT OF DORMITORY AUTHORITY OFFICER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the _____ day of _____ in the year 20 ____, before me personally came **LOUIS R. CIRELLI, JR., P.E.**, to me known, who, being by me duly sworn, did depose and say that he resides in Schenectady, New York; that he is the Director of Procurement of the Dormitory Authority, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the Board of said corporation.

ACKNOWLEDGMENT OF CONSULTANT, IF A CORPORATION

STATE OF _____)
COUNTY OF _____) ss:

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/they reside(s) at _____, (include street and street number, if any); that he/she/they is (are) the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the Board of Directors of said corporation.

Notary Public

ACKNOWLEDGMENT OF CONSULTANT IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF _____)
COUNTY OF _____) ss.:

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

APPENDIX "A"
SCOPE OF SERVICES OF CONSULTANT

Provide pre-employment and/or employee background checks and screening services including but not limited to the following services:

- Employment Verification including dates of employment, positions/titles held, salary, reason for leaving and re-hire eligibility. Employment verification shall consist of the last three (3) employers or a minimum of ten (10) years of employment history, whichever is greater. In some instances, employment verification may be more extensive.
- Educational Verification (domestic and/or international) including confirmation of all degrees conferred including but not limited to: high school diploma or GED, college and post graduate degrees. Verification shall include institution name, location, date degree received, type of degree awarded and major/minor as applicable. (International education verification and U.S. equivalency may be required on select candidates.)
- Professional License and/or Certification Verification including status of license/certification, date of issuance, expiration date, state and licensing authority and disciplinary action, as applicable.
- Driving Records/Motor Vehicle Records: current driving record, state of issuance, restrictions or infractions (if applicable) and complete driving history on all licenses held in any jurisdiction for the past five (5) years including specific information on violations, suspensions and convictions (any alcohol and drug-related convictions should be reported for the past ten (10) years).
- Multi-jurisdictional criminal conviction history records including but not limited to: county criminal conviction history, state criminal conviction history and federal criminal conviction history records. In rare instances, International criminal conviction records search may be required. Search area determined by applicant's current and previous residential and employment locations (additional searches may be required). Criminal history records not limited to specified durations and all criminal records should be reported.
- Sex Offender Registry, including state and/or national registry.
- Social Security Number verification/trace or Name/Address Verification; including name, aliases, social security number, search against SSA death index and current and former addresses.
- Employment Reference Checks, including three (3) to five (5) employment references including and at least one (1) reference from a current/previous supervisor.
- Employment Credit Report as deemed applicable by DASNY.
- Military Service Verification; including dates, positions held, branch and discharge status.

APPENDIX "B"
SUMMARY OF COST

Description of Services	Cost per search
1. Social Security Trace/Address Verification	
2. County Criminal Conviction History	
3. State Criminal Conviction History	
3a. NY Statewide Criminal Conviction Record	
3b. NJ Statewide Criminal Conviction Record	
3c. MA Statewide Criminal Conviction Record	
4. Federal Criminal Conviction History	
5. International Criminal Conviction History	
6. Employment Verification	
7. Domestic Education Verification	
8. International Education Verification	
9. Professional License and/or Certification Verification	
10. Employment References	
11. Motor Vehicle Record	
12. Employment Credit Report	
13. Military Service Verification	
14. Sex Offender Registry	
15. Other/Miscellaneous Expenses	
16. Package Options	

APPENDIX "C"
APPROVED CLASSIFICATIONS AND RATES

	Maximum
Classifications	Direct Hourly Rates*

*Inclusive of Overhead and Profit.

APPENDIX "D"
ADDITIONAL INSUREDS

Not Applicable

APPENDIX "E"
ADDITIONAL ITEMS

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1. LABOR LAW PROVISIONS

- A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in performance of the Work.
- B. The CONSULTANT specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
- 1) no laborer, workmen, or mechanic, in the employ of the CONSULTANT, subconsultant, or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;
 - 2) the wages paid for legal day's work shall be not less than the prevailing rate of wages as defined by law;
 - 3) the minimum hourly rate of wages to be paid shall be not less than that stated in this Contract and shall be designated by the Commissioner of Labor of the State of New York; and
 - 4) the CONSULTANT and every subconsultant 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 laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.
- C. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade that said persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the CONSULTANT or any subconsultant shall not exceed the number submitted by the applicable standards of the New York State Department of Labor, or, in the absence of said standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.
- D. All employees of the CONSULTANT and each subconsultant shall be paid in accordance with the provisions of the Labor Law. Certified payroll copies shall be provided to the OWNER upon request.
- E. The CONSULTANT agrees that, in case of underpayment of wages to any worker engaged in the Work by the CONSULTANT or any subconsultant, the OWNER shall withhold from the CONSULTANT, out of payments due, an amount sufficient to pay said worker the difference between the wages required to be paid under this Contract and rates actually paid said worker for the total number of hours worked and that the OWNER may disburse said amount so withheld by the OWNER for and on account of the CONSULTANT to the employees to whom said amount is due. The CONSULTANT further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the

percentages to be retained by the OWNER pursuant to other provisions of this Contract.

F. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law this Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- 1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or
- 2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

G. The CONSULTANT specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:

- 1) in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no consultant, nor any person acting on behalf of said CONSULTANT or subconsultant, shall by reason of race, creed, color, 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) no consultant, nor any person on behalf of said CONSULTANT or subconsultant shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;
- 3) there may be deducted from the amount payable to the CONSULTANT, by the OWNER under this Contract, a penalty of Fifty and 00/100 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 this Contract; and
- 4) this Contract may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.

H. The CONSULTANT specifically agrees to certify its payrolls and keep these certified records on site and available, and provide copies to the OWNER upon request.

2. NONDISCRIMINATION

During the performance of this Contract, the CONSULTANT agrees as follows:

- A. The CONSULTANT will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.
- B. If directed to do so by the Commissioner of Human Rights, the CONSULTANT will send to each labor union or representative of workers with which the CONSULTANT has or is bound by a collective bargaining or other agreement or

understanding, a notice, to be provided by the State Commissioner of Human Rights, advising said labor union or representative of the CONSULTANT's Contract under clauses A. through G. (hereinafter called "nondiscrimination clauses"). If the CONSULTANT was directed to do so by the contracting agency as part of the proposal or negotiation of this Contract, the CONSULTANT shall request said labor union or representative to furnish a written statement that said labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status, and that said labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses and that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If said labor union or representative fails or refuses to comply with said request that it furnish such a statement, the CONSULTANT shall promptly notify the State Commissioner of Human Rights of said failure or refusal.

- C. If directed to do so by the Commissioner of Human Rights, the CONSULTANT will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- D. The CONSULTANT will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
- E. The CONSULTANT will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the CONSULTANT'S books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Commissioner of Labor of the State of New York for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.
- F. This Contract may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the CONSULTANT has not complied with these nondiscrimination clauses, and the CONSULTANT may be declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the CONSULTANT satisfies the State Commissioner of Human Rights that the CONSULTANT has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the CONSULTANT, and an opportunity has been afforded the CONSULTANT to be heard publicly in accordance with the Executive Law.

Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

G. The CONSULTANT will include the provisions of clauses A. through F. in every subcontract or purchase order in such a manner that said provisions will be binding upon each subconsultant or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing said provisions of said subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subconsultant or vendor as a result of said direction by the State Commissioner of Human Rights or the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

H. Workforce Employment Utilization Report (“Workforce Report”) Form

The CONSULTANT shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report, in such format as shall be required by OWNER on a QUARTERLY basis during the term of the Contract. Separate forms shall be completed by CONSULTANT and any Subcontractor.

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

3. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted into this Contract shall be deemed to be inserted herein and this Contract shall read and shall be enforced as though so included.

4. **COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

The CONSULTANT shall comply fully with all applicable laws, rules, and regulations.

5. **CONTRACT DEEMED EXECUTORY-Not Applicable**

6. **OWNERSHIP OF DOCUMENTS – Not Applicable**

7. **TERMINATION OR SUSPENSION**

A. **Termination for Cause**

If the CONSULTANT defaults by failing to substantially perform, in accordance with the terms of this Term Contract for Professional Services, as determined by the OWNER, the OWNER may give written notice to the CONSULTANT: (i) terminating this Term Contract for Professional Services effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the CONSULTANT

initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the CONSULTANT fails to initiate cure upon the request of the OWNER and continue such cure until complete, the OWNER may give notice to the CONSULTANT of immediate termination. If the OWNER terminates this Term Contract for Professional Services pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the CONSULTANT was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph B of this Article.

B. Termination for Convenience or Suspension of Work

The OWNER may at any time give written notice to the CONSULTANT terminating this Term Contract for Professional Services or suspending the Work, in whole or in part, for the OWNER's convenience and without cause. If the OWNER terminates this Term Contract for Professional Services or suspends the Work, the CONSULTANT shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

C. Payment In Case Of Termination or Suspension of Work

1. If this Term Contract for Professional Services is terminated by the OWNER pursuant to Paragraph 7A above, no further payment shall be made to the CONSULTANT until completion of the Work. At such time, the CONSULTANT's compensation shall, at the OWNER's option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Purchase Order* up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the CONSULTANT's compensation shall be reduced by all costs and damages incurred by the OWNER as a result of the default of the CONSULTANT.

2. If this Term Contract for Professional Services is (i) terminated by the OWNER pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT's compensation shall be calculated on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Purchase Order* up to the effective termination or suspension date and reasonable costs associated with termination or suspension. In no event shall the CONSULTANT be entitled to compensation in excess of the Professional Contract Price.

3. If this Term Contract for Professional Services is suspended less than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT specifically agrees that such suspension, interruption or delay of the performance of the services pursuant to this item shall not increase the cost of the Professional Services.

8. SUSPENSION OR ALTERATION-Not Applicable

9. LAWS OF THE STATE OF NEW YORK

This Contract shall be governed by the Laws of the State of New York.

10. CODES – Not Applicable

11. GOVERNMENT PROVISIONS

The CONSULTANT shall comply with any applicable provisions or Acts of Congress, rules, regulations, and requirements of the Government of the United State of America. If there is a grant of money or loan of money by the Government of the United States of America for the Project, then the CONSULTANT shall furnish any information and provide any assistance which the OWNER deemed necessary for the preparation of any certificates, reports, or materials required as a result of obtaining said grant or loan.

12. COOPERATION-Not Applicable

13. LATE PAYMENT

Timeliness of payment and any interest to be paid to the CONSULTANT for late payment shall be governed by Section 2880 of the Public Authorities Law, to the extent required by law.

14. DEATH OF THE CONSULTANT

If the CONSULTANT is an individual and that CONSULTANT shall die prior to the said completed performance of this Contract, then the payment to the estate of said CONSULTANT, pursuant to this Contract, shall be made as if the Work or any part thereof had been suspended or altered on the date of the death of the CONSULTANT. If the CONSULTANT is a partnership and a partner shall die prior to the completed performance of this Contract, the OWNER, in the OWNER's discretion, may deem the Work or any part thereof, suspended or altered on the date of said death or any date thereafter which the OWNER selects, and the payment to the estate of the deceased CONSULTANT or the partnership, pursuant to this Contract, shall be made as if the Work or any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by the OWNER. The OWNER shall have the right to the immediate possession of all files of the CONSULTANT relating to the Work, and shall have a right to retain the services of another CONSULTANT to complete the Work. If the CONSULTANT is a professional or other corporation, then this paragraph shall not be applicable.

15. OWNER-CONSULTANT RELATIONSHIP

The relationship created by this Contract between the OWNER and CONSULTANT is one of independent CONSULTANT and it is in no way to be construed as creating any agency relationship between the OWNER and the CONSULTANT nor is it to be construed as, in any way or under any circumstances, creating or appointing the CONSULTANT as an agent of the OWNER for any purpose whatsoever.

16. PROTECTION OF LIVES AND HEALTH – Not Applicable

17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE

- A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.
- B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the selected vendor shall, within ten days following either oral or written notice that it must comply, submit, in the form provided by the OWNER, a duly executed NYS Vendor Responsibility Questionnaire to the OWNER at the following address:

DASNY
NYS Vendor Responsibility Questionnaire Officer
Procurement Department
515 Broadway
Albany, New York 12207

- C. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the OWNER in making an award determination.

18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS

- A. Officers and employees of the OWNER are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, Consultant, 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 *Public Officers Law* expressly prohibits the CONSULTANT, 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, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

A gift is anything more than nominal in value, in any form, given to a DASNY employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise.

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 CONSULTANT 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 agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from the OWNER or its agents 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 agents that constitutes a conflict of interest, in fact or in appearance, and
 - 6) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.

- D. The OWNER encourages the CONSULTANT 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 CONSULTANT may employ relatives of OWNER employees, the OWNER 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 OWNER reserves the right to request that the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 Section.
- H. Any violation of these provisions shall justify termination of this Contract and may result in OWNER's rejection of the CONSULTANT's bids or proposals for future contracts.
- I. CONSULTANT shall at all times during the Contract term remain responsible. CONSULTANT 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.
- J. 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 into question the responsibility of CONSULTANT. In the event of such suspension, CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, CONSULTANT must 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 this Contract.
- K. Notwithstanding any other provision of this Contract, upon written notice to CONSULTANT, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, this Contract may be terminated by the President of OWNER or his or her designee at CONSULTANT's expense where CONSULTANT 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 breach.
- L. By entering into this Contract, CONSULTANT certifies, under the penalties of perjury, that CONSULTANT is not on the list created pursuant to paragraph (b)

of subdivision 3 of section 165-a of the State Finance Law. CONSULTANT further certifies that CONSULTANT 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 State Finance Law.

- M. During this Contract, should OWNER receive information that a person (as defined in New York 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 CONSULTANT in default.

19. COOPERATION WITH INVESTIGATIONS

The CONSULTANT agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Internal Affairs (“OIA”) of the OWNER or any other duly authorized representative of the OWNER (“Representative”).

The CONSULTANT shall grant the OIA or the Representative 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 CONSULTANT, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the CONSULTANT, relating to the CONSULTANT. These shall include, but not be limited to: subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/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. At the OIA’s or the Representative’s request, said materials shall be provided in a computer readable format, where available. At the request of the OIA or the Representative, the CONSULTANT shall execute such documents, if any, as are necessary to give the OIA or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the CONSULTANT but not currently in the CONSULTANT’s physical possession. The CONSULTANT shall not enter into 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 CONSULTANT shall assist the OIA or the Representative 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 this Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

The CONSULTANT shall assist the OIA or the Representative in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the CONSULTANT, for purposes of the Contract.

The CONSULTANT shall require each subcontractor to include in all agreements that the subcontractor may hereinafter enter into with any and all subcontractors, consultants and suppliers, in connection with this Contract, a right-to-audit clause in favor of the OWNER

conferring rights and powers of the type outlined in this section. The CONSULTANT shall not enter into any subcontract with a subcontractor in connection with this Contract that does not contain such a provision.

The CONSULTANT shall not make any payments to a subcontractor, consultant or supplier from whom the CONSULTANT has failed to obtain and supply to the OIA or the Representative complete, accurate and truthful information in compliance with a request from the OIA or the Representative to the CONSULTANT.

Any violation of the provisions of this Article shall justify termination of this Contract and may result in the OWNER's rejection of the CONSULTANT's bids or proposals for future contracts.

20. FALSE STATEMENTS/INFORMATION

- A. False statements, 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
 - 2) Disapproval of future contracts and sub-contracts
 - 3) Withholding of final payment on the Contract
 - 4) Civil and/or criminal prosecution
- B. These provisions 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.

21. INVALID PROVISIONS

If any term or provision of the Contract or the application thereof to any person, firm or corporation, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract, or the application of such terms or provisions to persons, firms or corporations, 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 shall be valid and be enforced to the fullest extent permitted by law.

22. CONFLICTING TERMS

In the event of a conflict between or among any parts of the Contract, including Appendices thereto, the better quality, greater quantity, or more costly part shall govern, unless the OWNER directs otherwise.

23. 2005 PROCUREMENT LOBBYING LAW

- A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of and agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.
- B. For any contract \$15,000 or more each proposer shall submit, with its proposal, on the form provided herewith, *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k*. The information contained in *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k*

will serve as an informational resource to aid the OWNER in making an award determination.

- C. The OWNER reserves the right to terminate this contract in the event it is found that the certification filed by the Professional in accordance with 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 termination right, such termination constituting a termination for cause, by providing written notification to the Professional in accordance with the terms of Article 7.A of this Contract – Termination for Cause.

24. NONCOMPLIANCE

This Contract may be void and of no effect unless the CONSULTANT complies with each of the provisions of these **ADDITIONAL ITEMS.**