



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

# **BIDDING REQUIREMENTS FOR CONSTRUCTION**

### **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  
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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](http://www.dasny.org)

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# JOB ORDER CONTRACTING PROGRAM

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**NOTICE TO BIDDERS**  
**Dormitory Authority – State of New York (“DASNY”)**

**JOB ORDER CONTRACTS**

**Region No. 1**  
**CR 452 General Contractor**

**Region No. 1A**  
**CR 453 General Contractor**

**DASNY Project #1000509999**

Sealed bids for the above 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.”** DASNY will not be responsible for receipt of bids which do not comply with these instructions.

Description of Contracts	Region / CR	Facility / County
General Contractor	Region 1 / CR 452	Metro DDSO -Bronx, Brooklyn DDSO - Kings (Brooklyn), and Bernard Fineson DDSO - Queens
General Contractor	Region 1A / CR 453	Long Island DDSO - Nassau and Suffolk

**The following represents prospective projects the Owner intends to complete within calendar year 2019 by JOC contract award of CR452 and CR453. The Owner retains the right to add or remove projects at their discretion.**

1. CR 452 Region 1 – NYC

- a. Client: Office of People with Developmental Disabilities (OPWDD)  
 Facility: Bernard Fineson DDSO (BFDDSO)  
 Project Description and Location:

1. Construction Front Entrance Ramp at 75-19 190 Street, Fresh Meadows (Queens), N.Y.
2. Replace exterior concrete walkway, and side entrance walkway expansion at 22-64/66 94 Street, East Elmhurst (Queens), N.Y.
3. Kitchen Renovation at 35-15 86 Street, Jackson Heights (Queens), N.Y.
4. Kitchen Renovation at 115-59 217 Street, Cambria Heights (Queens), N.Y.

- b. Client: Office of People with Developmental Disabilities (OPWDD)  
 Facility: Brooklyn DDSO (BKDDSO)  
 Project Description and Location:

1. Fire Stair Replacement at 366 Parkside Ave., Brooklyn, N.Y.
2. Below grade concrete waterproofing and renovations at 9502 Ft. Hamilton Parkway, Brooklyn, N.Y.

3. Window Replacement at 2230 64<sup>th</sup> St., Brooklyn, N.Y.
4. Sidewalk and Curb Replacement at 182 East 92<sup>nd</sup> St., Brooklyn, N.Y.
5. Window and Lintel Replacement at 183 East 92<sup>nd</sup> St., Brooklyn, N.Y.
6. Asphalt Replacement at 1038 Cleveland St., Brooklyn, N.Y.
7. Window and Door Replacement at 1038 Cleveland St., Brooklyn, N.Y.
8. Roof Replacement and removal of hazardous materials at 366 Parkside Ave., Brooklyn, N.Y.
9. Deck and Stair Replacement at 367 Hawthorne St., Brooklyn, N.Y.
10. Build Basement Office and 1<sup>st</sup> Floor Medical Room at 1260 E 55 St., Brooklyn, N.Y.

- c. Client: Office of People with Developmental Disabilities (OPWDD)  
 Facility: Metro DDSO (MEDDSO)  
 Project Description and Location:

1. Window and Door Replacement at 416W 149 St, Bronx, N.Y.

2. CR 453 Region 1A – Long Island

- a. Client: Office of People with Developmental Disabilities (OPWDD)  
 Facility: Long Island DDSO (LIDDSO)  
 Project Description and Location:

1. Generator and ATS Replacement at 206A Oxhead, Centereach, N.Y.
2. Generator and ATS Replacement at 206B Oxhead, Centereach, N.Y.
3. Foundation Waterproofing at 2541 Natta Blvd., Bellmore, N.Y.
4. Sunroom to Office Renovation and Ramp Installation at 30 Bagatelle Rd., Dix Hills, N.Y.
5. Front and Rear Entrance Ramp Replacement at 211 Lenox Ave., Huntington Station, N.Y.
6. Front and Rear Entrance Ramp Replacement at 195 Old South Path, Melville, N.Y.
7. New Patio Installation, Roof & Gutter Replacement and removal of hazardous materials at 123 Carmen Rd., Dix Hills, NY.
8. New Walkway, Stairs, and Deck Installation with associated hazardous material removal at 1 Ketcham Rd., Hicksville, N.Y.
9. Garage to Office Conversion at 718 Middle Rd., Bayport, NY.
10. Split System AC Installation at 184 W. Shore Rd., Huntington, N.Y.
11. Sprinkler System Upgrade at 315 Little Plains Rd., Huntington, N.Y.

**The Pre-Bid Conference for Prospective Bidders shall be held as follows:**

**CR No. 452 Region 1 NYC: 1 Penn Plaza, New York, New York, 52<sup>nd</sup> Floor Conference Room, February 21<sup>st</sup>, 2019, 1:30 p.m.**

**CR No. 453 Region 1A Long Island: DASNY Long Island Regional Field Office located at Pilgrim P.C. – Building No. 26 998 Crooked Hill Rd., Brentwood, N.Y. 11717**

**Individuals attending the Pre-Bid Conferences 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 visitors pass prior to attending the Pre-Bid Conferences.**

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 **March 12<sup>th</sup>, 2019** will be considered. Bids shall be publicly opened and read aloud. Bid results can be obtained by calling Ms. Amy Aumand, 518-254-3561, twenty-four (24) Hours after the Bid Opening, or 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](mailto: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 on February 28, 2019:

- <http://www.dasny.org/rfp-bidopportunities-solicitations/constructionservices/joc-opportunities/new.aspx>

The Dormitory Authority of the State of New York ("DASNY") has determined that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages and any local history of labor unrest are best met by use of a Project Labor Agreement ("PLA") on this Project for CR452. The successful low bidder, as a condition of being awarded a Contract, will be required to execute the PLA described in the Information for Bidders and included in the Contract Documents. See Section 18.0 of the Information for Bidders of the Contract Documents for additional information. All subcontractors of every tier will be required to agree to be bound by the PLA.

MBE Subcontracting Goal, 18%

WBE Subcontracting Goal, 12%

EEO Goal, Region 1, 45%

SDVOB Goal, 6%

Gerrard P. Bushell, President & CEO  
October 3, 2017

## **Section 1.0 - Pre-Bid Meetings**

### **MANDATORY Pre-Bid Conferences**

The Pre-Bid Conference for Prospective Bidders will be held at:

- Region 1 NYC CR No. 452: One Penn Plaza, New York, New York, 52<sup>nd</sup> Floor Conf. Room, February 21<sup>st</sup>, 2019, at 1:30 p.m.
- Region 1A Long Island CR No. 453: DASNY Long Island Regional Field Office located at Pilgrim P.C. – Building No. 26 998 Crooked Hill Rd., Brentwood, N.Y. 11717, February 21<sup>st</sup>, 2019 at 9:30 a.m.

The purpose is to review Contract Document requirements. All individuals attending the Pre-Bid Conferences should allow sufficient time for processing through building security. Attendees will be required to present government-issued picture identification to building security officials and obtain a visitors pass prior to attending the Pre-Bid Conferences. Prospective bidders who fail to attend the pre-bid meetings may, at the sole discretion of the Owner, be deemed non-responsive.

## **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. 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 provided to each prospective bidder recorded as having received a copy of the Contract Documents from the Owner and shall be available at the places 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.
- 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.

**B. 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 \$50,000.
    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.

**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 as requested by the Owner.
- B. Pursuant to provisions of the General Conditions, Article 19 – Executive Order No 125, the Contractor shall submit a New York State Vendor Responsibility Questionnaire For Profit Construction (CCA-2) to the Owner for each Subcontractor proposed for the Work with a subcontract value of \$2,000,000 or greater.

**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.

Region 1 General Contractor	30 %
Region 1A General Contractor	30 %

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, 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. These requirements will include: opportunities for minority and women business enterprises (M/WBE), equal employment opportunities for minority group members and women (EEO) and service disabled veteran owned businesses (SDVOB). 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 M/WBE, EEO & SDVOB firms at a level commensurate with their capability and availability. The Owner has determined that the goals for M/WBE, EEO & SDVOB participation may be achieved in the Work of the Contract as follows:

Description	Region(s)	MBE %	WBE %	EEO%	SDVOB %
General Contractor	1 & 1A	18 %	12 %	45 %	6%

- 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
- 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 forms 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, 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 -- State of New York, 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 having as surety thereon a surety authorized to do business in New York State and otherwise satisfactory to the Owner. 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.

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

Region	CR #	Description	Bid Security	Maximum Contract Value per Contract Term
1	452	General Contractor	\$ 50,000	\$ 2,000,000
1A	453	General Contractor	\$ 50,000	\$ 1,500,000

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;
  2. if no Agreement has been executed, sixty (60) days after the date of the opening of bids.

**Section 11.0 – 2019 Prospective Projects:** The following represents prospective projects the Owner intends to complete within calendar year 2019 by JOC contract award of CR452 and CR453. The Owner retains the right to add or remove projects at their discretion.

1. CR 452 Region 1 – NYC

- a. Client: Office of People with Developmental Disabilities (OPWDD)  
 Facility: Bernard Fineson DDSO (BFDDSO)  
 Project Description and Location:

1. Construction Front Entrance Ramp at 75-19 190 Street, Fresh Meadows (Queens), N.Y.
2. Replace exterior concrete walkway, and side entrance walkway expansion at 22-64/66 94 Street, East Elmhurst (Queens), N.Y.
3. Kitchen Renovation at 35-15 86 Street, Jackson Heights (Queens), N.Y.
4. Kitchen Renovation at 115-59 217 Street, Cambria Heights (Queens), N.Y.

b. Client: Office of People with Developmental Disabilities (OPWDD)  
Facility: Brooklyn DDSO (BKDDSO)  
Project Description and Location:

1. Fire Stair Replacement at 366 Parkside Ave., Brooklyn, N.Y.
2. Below grade concrete waterproofing and renovations at 9502 Ft. Hamilton Parkway, Brooklyn, N.Y.
3. Window Replacement at 2230 64<sup>th</sup> St., Brooklyn, N.Y.
4. Sidewalk and Curb Replacement at 182 East 92<sup>nd</sup> St., Brooklyn, N.Y.
5. Window and Lintel Replacement at 183 East 92<sup>nd</sup> St., Brooklyn, N.Y.
6. Asphalt Replacement at 1038 Cleveland St., Brooklyn, N.Y.
7. Window and Door Replacement at 1038 Cleveland St., Brooklyn, N.Y.
8. Roof Replacement and removal of hazardous materials at 366 Parkside Ave., Brooklyn, N.Y.
9. Deck and Stair Replacement at 367 Hawthorne St., Brooklyn, N.Y.
10. Build Basement Office and 1<sup>st</sup> Floor Medical Room at 1260 E 55 St., Brooklyn, N.Y.

c. Client: Office of People with Developmental Disabilities (OPWDD)  
Facility: Metro DDSO (MEDDSO)  
Project Description and Location:

1. Window and Door Replacement at 416W 149 St, Bronx, N.Y.

## 2. CR 453 Region 1A – Long Island

a. Client: Office of People with Developmental Disabilities (OPWDD)  
Facility: Long Island DDSO (LIDDSO)  
Project Description and Location:

1. Generator and ATS Replacement at 206A Oxhead, Centereach, N.Y.
2. Generator and ATS Replacement at 206B Oxhead, Centereach, N.Y.
3. Foundation Waterproofing at 2541 Natta Blvd., Bellmore, N.Y.
4. Sunroom to Office Renovation and Ramp Installation at 30 Bagatelle Rd., Dix Hills, N.Y.
5. Front and Rear Entrance Ramp Replacement at 211 Lenox Ave., Huntington Station, N.Y.
6. Front and Rear Entrance Ramp Replacement at 195 Old South Path, Melville, N.Y.
7. New Patio Installation, Roof & Gutter Replacement and removal of hazardous materials at 123 Carmen Rd., Dix Hills, NY.

8. New Walkway, Stairs, and Deck Installation with associated hazardous material removal at 1 Ketcham Rd., Hicksville, N.Y.
9. Garage to Office Conversion at 718 Middle Rd., Bayport, NY.
10. Split System AC Installation at 184 W. Shore Rd., Huntington, N.Y.
11. Sprinkler System Upgrade at 315 Little Plains Rd., Huntington, N.Y.

**Section 12.0 – Compliance With Laws**

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

**Section 13.0 - Bid Designation**

- 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 452	Region 1	General Contractor
CR 453	Region 1A	General Contractor

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 14.0 - 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.

- 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 15.0 - Required Bonds**

- A. Simultaneously with the delivery of the executed Contract, the successful Bidder shall furnish to the Owner Payment and Performance Bonds in an amount equal to the Maximum Contract Value as security for the payment of all persons performing labor on the project under the contract or furnishing materials in connection with the Contract and for faithful performance of the Contract.
- B. The surety on such bonds shall be a surety company rated A- or better by A.M. Best Company, shall be licensed to do business in the State of New York, and shall hold a certificate of authority as an acceptable surety on federal bonds or otherwise satisfactory to the Owner.
- C. The Contractor will provide the necessary Bonds to the Owner, but shall not be reimbursed for the direct cost of the Bonds.
- D. Attorneys-in-fact who sign said bonds on behalf of a surety must affix to each bond a certified and effectively dated copy of their power of appointment.

### **Section 16.0 - 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 17.0 - Substantial Completion and Liquidated Damages**

- A. Total time of completion for the Job Order Contracting Program is:
  - 1. Two years 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 two years 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 18.0 – 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

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. DASNY Vendor Questionnaire – within three (3) days after low bidder notification
4. Agreement - 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

### **Section 19.0 – Project Labor Agreement: Region 1 – CR 452 General Contractor**

The purpose of this is to notify prospective bidders that under certain conditions the successful Contractor awarded this Contract may be subject to the provisions set forth in the PLA. These conditions include:

- Any DASNY Project in the five (5) boroughs of New York City where an economic evaluation or study of the Project was performed by a DASNY Consultant and that study confirmed that a PLA would provide a cost savings.



Therefore, in situations where the above applies, the Contractor must execute the PLA included, as a condition of approval of the Job Order and commencement of the Work. The Work undertaken in connection with the subject work order will be governed by, and subject to the conditions set forth in the PLA. In addition, in situations where the above applies, all subcontractors of every tier will be required to execute a Letter of Assent, included in the enclosed PLA, agreeing to be bound by the PLA.

For additional information on the DASNY NYC Project Labor Agreements (PLAs), go to the following DASNY Website: <http://www.dasny.org/PLAs/2013/NYC/index.php>

A. Included Projects:

The Dormitory Authority of the State of New York (“DASNY”) has determined that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages and any local history of labor unrest are best met by use of a Project Labor Agreement (“PLA”) on this Project. The successful low bidder as a condition of being awarded this contract must execute the PLA included in the Contract Documents following the Form of Bid. The Work undertaken in connection with this Project will be governed by, and subject to the conditions set forth in the PLA. All subcontractors of every tier will be required to execute a Letter of Assent, included in the enclosed PLA, agreeing to be bound by the PLA. The PLA has been approved by the Building and Construction Trades Department, AFL-CIO and executed by the Building and Construction Trades Council of Greater New York and Vicinity and its participating affiliated Local Unions.

B. Excluded Projects

The Dormitory Authority of the State of New York (the “Authority”) and the Building and Construction Trades Council of Greater New York and Vicinity (the “Council”) have entered into a Memorandum of Understanding (“MOU”) that requires the use of a Project Labor Agreement (“PLA”) on applicable covered projects within the City of New York. While this Project is considered an “Excluded Project”, under the MOU and therefore the use of a PLA is optional on this Project, the successful prime contractor performing work on this Project shall have the option to voluntarily execute the PLA. The purpose of section is to provide potential bidders of the Project with notice of this option, consistent with the provisions of the MOU. Execution of the applicable PLA following the Information for Bidders is not a requirement to perform work on this Project.

End of Document



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

### **FORMS OF BID**

#### **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](http://www.dasny.org)

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FORM OF BID

REGION 1 CR No. 452

Region 1: Metro DDSO - Bronx, Brooklyn DDSO - Kings (Brooklyn), and Bernard Fineson DDSO - Queens

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 December 28, 2018 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 **General Contractor** Contract Documents for Region 1 CR No.452, 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 NON-PLA WORK

- 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 \*\*

PLA WORK

- 4. Day Shift, Monday to Friday (as defined by the PLA): Contractor shall perform tasks during standard work week hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_

(Specify to four decimal places)

- 5. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Monday to Friday (as defined by the PLA): Contractor shall perform tasks during evening or night shift Monday to Friday 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 equal to or greater than Standard Work Week Hours Adjustment Factor \*\***

- 6. Day Shift Saturday or Sunday (as defined by the PLA): Contractor shall perform tasks during day shift Saturday, Sunday or Holiday 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 0.2000 greater than Standard Work Week Hours Adjustment Factor \*\***

- 7. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Saturday or Sunday (as defined by the PLA): Contractor shall perform tasks during evening or night shift Saturday, Sunday or Holiday 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 equal to or greater than Day Shift Saturday, Sunday and Holiday Hours Adjustment Factor \*\***

- 8. Holidays (as defined by the PLA): Contractor shall perform tasks during Holiday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least equal to or greater than Day Shift Saturday, Sunday and Holiday Hours Adjustment Factor \*\***

**AWARD CRITERIA FIGURE**

- 9. 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 .425  
\_\_\_\_\_
- Line 3. Other Than Normal Working Hours  
\_\_\_\_\_
- Line 4. Multiply Line 3 by .075  
\_\_\_\_\_
- Line 5. Non Pre-Priced Work  
\_\_\_\_\_
- Line 6. Multiply Line 5 by .03  
\_\_\_\_\_
- Line 7. Day Shift, Monday to Friday (as defined by the PLA)  
\_\_\_\_\_
- Line 8. Multiply Line 7 by .3995  
\_\_\_\_\_
- Line 9. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Monday to Friday (as defined by the PLA)  
\_\_\_\_\_
- Line 10. Multiply Line 9 by .01762  
\_\_\_\_\_
- Line 11. Day Shift Saturday or Sunday (as defined by the PLA)  
\_\_\_\_\_
- Line 12. Multiply Line 11 by .01762  
\_\_\_\_\_
- Line 13. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Saturday or Sunday (as defined by the PLA)  
\_\_\_\_\_
- Line 14. Multiply Line 13 by .01763  
\_\_\_\_\_
- Line 15. Holidays (as defined by the PLA)  
\_\_\_\_\_

**Form of Bid**

---

Line 16. Multiply Line 15 by .01763  
\_\_\_\_\_

Line 17. Summation of lines 2, 4, 6, 8, 10, 12, 14, and 16

\_\_\_\_\_ (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



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FORM OF BID

REGION 1A CR No. 453

Region 1A: Long Island DDSO – Nassau and Suffolk Counties

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 December 28, 2018 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 **General Contractor** Contract Documents for Region 1A CR No. 453, 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: \_\_\_\_\_

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BIDDING REQUIREMENTS for CONSTRUCTION

BID BOND

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)

or in the full and just sum of the difference between the total bid of the Principal and the total bid of the bidder submitting the next lowest bid, whichever sum shall be higher, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our 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.

BIDDING REQUIREMENTS for CONSTRUCTION

BID BOND

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)



BIDDING REQUIREMENTS for CONSTRUCTION

BID 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 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 RENOVATION AND REHABILITATION PLA

**PROJECT LABOR AGREEMENT**  
**COVERING**  
**SPECIFIED RENOVATION & REHABILITATION WORK**

**BETWEEN**

**CONSTRUCTION MANAGER OR GENERAL CONTRACTOR**

**AND**

**NEW YORK CITY BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

**AND**

**SIGNATORY LOCAL UNIONS**

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**ARTICLE 1 - PREAMBLE**

WHEREAS, the Dormitory Authority of the State of New York (“Authority” or “DASNY”), as a Project Manager for its construction client, [IDENTIFY CLIENT] (“Client”), has an agreement with [ IDENTIFY CONSTRUCTION MANAGER OR GENERAL CONTRACTOR] (“CONSTRUCTION MANAGER OR GENERAL CONTRACTOR”) to perform construction services at [IDENTIFY PROJECT] (“Project”) and the Authority and its CONSTRUCTION MANAGER OR GENERAL CONTRACTOR desire to provide for the cost efficient, safe, quality, and timely completion of certain construction, as defined in Article 3, in a manner designed to afford the lowest costs to the Client, the Authority and the public they represent, and the advancement of permissible statutory objectives;

WHEREAS, this Project Labor Agreement will foster the achievement of these goals, inter alia, by:

(1) providing a mechanism for responding to the unique construction needs associated with this Project Work and achieving the most cost effective means of construction, including direct labor cost savings, and modifying other work and pay practices which would otherwise apply to Project Work;

(2) expediting the construction process and otherwise minimizing the disruption to the ongoing operations of the construction Client in the project area;

(3) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes, reducing jobsite friction on common situs worksites, and promoting labor harmony for the duration of the Project Work;

(4) standardizing the terms and conditions governing the employment of labor on the Project Work;

(5) permitting wide flexibility in work scheduling;

(6) permitting adjustments to work rules and staffing requirements from those which otherwise might obtain;

(7) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;

(8) ensuring a reliable source of skilled and experienced labor;

(9) securing applicable New York State Labor Law exemptions;

(10) promoting the statutory objectives stated in the Authority's enabling legislation, applicable Executive Orders, and Authority resolutions, in a non-discriminatory manner designed to open construction opportunities to all qualified bidders;

(11) complying with the goals established under Article 15-a of the Executive Law for the Project Work;

(12) furthering public policy objectives as to improved employment opportunities for minorities, women and the economically disadvantaged, in connection with the Project Work, including but not limited to consideration and implementation where appropriate of any approved Mentor-Protege program established hereafter by the Authority pursuant to Section 147 of the State Finance Law, as amended by Chapter 360 of the 2009 Laws of the State of New York;

(13) increasing apprenticeship levels for minorities, women and economically disadvantaged individuals to the fullest extent allowed by law; and

(14) permitting contractors and subcontractors working on the Project Work to retain a percentage of their "core" employees.

WHEREAS, the Building and Construction Trades Council of Greater New York and Vicinity, its participating affiliated Local Unions and their members, desire to assist the Authority and its CONSTRUCTION MANAGER OR GENERAL CONTRACTOR in meeting these operational needs and objectives as well as to provide for stability, security and work opportunities which are afforded by this Project Labor Agreement; and

WHEREAS, the Parties desire to maximize Project Work safety conditions for both workers and the community in the project area.

NOW, THEREFORE, the Parties enter into this Agreement:

**SECTION 1. PARTIES TO THE AGREEMENT**

This is a Project Labor Agreement ("Agreement") entered into by



CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and its successors and assigns, in its capacity as construction manager or general contractor for the Project Work, and the Building and Construction Trades Council of Greater New York and Vicinity ("Council") and the signatory affiliated Local Unions ("Unions" or "Local Unions"). The Parties each hereby warrant and represent that they have been duly authorized to enter into this Agreement.

## **ARTICLE 2 - GENERAL CONDITIONS**

### **SECTION 1. DEFINITIONS**

Throughout this Agreement, the various Union parties including the Building and Construction Trades Council of Greater New York and Vicinity and its participating affiliated Local Unions, are referred to singularly and collectively as "Union(s)" or "Local Unions"; the term "Contractor(s)" shall include any Construction Manager, General Contractor, Prime Contractor, and all other contractors, and subcontractors of all tiers engaged in Project Work within the scope of this Agreement as defined in Article 3; "Authority" means DASNY; the Building and Construction Trades Council of Greater New York and Vicinity is referred to as the "Council;" and the work covered by this Agreement (as defined in Article 3) is referred to as "Project Work."

### **SECTION 2. CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE**

This Agreement shall not become effective unless each of the following conditions are met: (1) The Agreement is approved by the Building and Construction Trades Department, AFL-CIO, (2) the Agreement is approved and executed by an executive officer of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and (3) the Agreement is executed by the Council, as well as the participating affiliated Local Unions.

**SECTION 3. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT**

This Agreement shall be binding on all participating Unions and their affiliates, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and all Contractors of all tiers performing Project Work, as defined in Article 3. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall include in any contract or subcontract that they let for performance during the term of this Agreement a requirement that their contractors and subcontractors, of all tiers, become signatory and bound by this Agreement with respect to that contracted or subcontracted work falling within the scope of Article 3, and all Contractors (including subcontractors) performing Project Work shall be required to sign a "Letter of Assent" in the form annexed hereto as Exhibit "A." This Agreement shall be administered by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or such other designee as may be named by the Authority, on behalf of all Contractors.

**SECTION 4. SUPREMACY CLAUSE**

This Agreement, together with the local Collective Bargaining Agreements, a list of which is appended hereto as Schedule A, represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to this Project Work, in whole or in part, except that Project Work which falls within the jurisdiction of the Operating Engineers Locals 14 and 15 will be performed under the terms and conditions set out in the Schedule A agreements of Operating Engineers Locals 14 and 15, respectively, provided further, any work performed that may fall under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking which shall be performed under the UA/IBEW Joint National Agreement for

Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of the dispute resolution mechanisms and no strike clause contained herein, which shall govern all Project Work. Subject to the foregoing, where a subject covered by the provisions of this Agreement is also covered by a Schedule A agreement, the provisions of this Agreement shall prevail. It is further understood that no Contractor shall be required to sign any other agreement as a condition of performing Project Work. No practice, understanding or agreement between a Contractor and a Local Union that is not set forth in this Agreement shall be binding on this Project Work unless endorsed in writing by the Authority or such other designee as may be designated by the Authority.

**SECTION 5. LIABILITY**

The liability of any Party under this Agreement shall be several and not joint. No Contractor shall be liable for any violations of this Agreement by any other Contractor; and the Council and Local Unions shall not be liable for any violations of this Agreement by any other Union.

**SECTION 6. THE AUTHORITY AND THE CONSTRUCTION MANAGER OR  
GENERAL CONTRACTOR**

Each of the Authority and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall require in its bid specifications for all Project Work within the scope of Article 3 that all successful bidders, and their subcontractors of all tiers, become bound by, and signatory to, this Agreement by execution of the Letter of Assent. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall not be liable for any violation of this Agreement by any Contractor. The Authority shall not be liable for any violation of this Agreement by any Contractor. It is understood that nothing in this Agreement shall be construed as limiting the

sole discretion of the Authority and of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR in determining which Contractors shall be awarded contracts for Project Work. It is further understood that the Authority has sole discretion at any time to terminate, delay or suspend the Project Work, in whole or part, provided that in the event the work is resumed it shall be governed by this Agreement.

**SECTION 7. AVAILABILITY AND APPLICABILITY TO ALL SUCCESSFUL BIDDERS**

The Unions agree that this Agreement will be made available to, and will fully apply to, any successful bidder for (or subcontractor of) Project Work who becomes signatory thereto, without regard to whether that successful bidder (or subcontractor) performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder (or subcontractor) are, or are not, members of any unions. This Agreement shall not apply to the work of any Contractor which is performed at any location other than the site of Project Work.

**SECTION 8. SUBCONTRACTING**

Contractors will subcontract Project Work only to a person, firm or corporation who is or agrees to become party to this Agreement.

**SECTION 9. LOCAL COLLECTIVE BARGAINING AGREEMENTS**

Each Local Union agrees to provide the Authority and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR with a complete copy of its local Collective Bargaining Agreement(s) listed on Schedule A within ten business days of its receipt of a request from the Authority or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or as soon thereafter as practical.

**ARTICLE 3-SCOPE OF THE AGREEMENT**

**SECTION 1. THE WORK**

Project Work shall include all construction contracts for the Project bid and let by the Authority, or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR. Such work shall mean any and all contracts that predominately involve renovation, repair, alteration, rehabilitation or expansion of any temporary or permanent building, facility, or structure that DASNY is engaged to perform. This work will include, but not be limited to, demolition, site work, asbestos and lead abatement, painting services, carpentry services, and carpet removal and installation, to the extent incidental to such renovation and rehabilitation. No construction work within the craft jurisdiction of any affiliated local union shall be excluded unless specifically set forth in this Agreement. Project Work shall also include JOCS contracts and requirement contracts.

**SECTION 2. TIME LIMITATIONS**

In addition to falling within the scope of Article 3, Section 1, to be covered by this Agreement Project Work must be (1) advertised and let for bid after [ insert the effective date of the MOU between DASNY and the BCTC], and (2) let for bid prior to December 31, 2014, the expiration date of this Agreement. It is understood that this Agreement, together with all of its provisions, shall remain in effect for all such Project Work until completion, even if not completed by the expiration date of the Agreement. If Project Work otherwise falling within the scope of Article 3, Section 1, is not let for bid by the expiration date of this Agreement, this Agreement may be extended to that work by mutual agreement of the parties.

**SECTION 3. EXCLUDED EMPLOYEES**

The following persons are not subject to the provisions of this Agreement, even though performing Project Work:

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A. Superintendents, supervisors, engineers, professional engineers and/or licensed architects engaged in inspection and testing, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons, provided, however, that general forepersons, forepersons and field surveyors covered by a craft's Schedule A Agreement are included employees;

B. Employees of the Authority, State of New York ("State"), or any other municipal or State Authority, agency or entity, or employees of any other public employer, even though performing other work on the Project site while covered Project Work is underway;

C. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery or involved in deliveries to and from the Project site, except to the extent they are lawfully included in the bargaining unit of a Schedule A agreement;

D. Employees of the Construction Manager (except those employees of the Construction Manager performing manual, on site construction labor will be covered by this Agreement);

E. Employees engaged in on-site equipment warranty work unless employees affiliated with the signatory unions are certified to perform warranty work;

F. Employees engaged in geophysical testing other than boring for core samples;

G. Employees engaged in laboratory, specialty testing, or inspections, pursuant to a professional services agreement between the Authority or its Client, or any of the Authority's other professional consultants; and

H. Employees engaged in on-site maintenance of installed equipment or systems which maintenance is awarded as part of a contract that includes Project Work but which maintenance occurs after installation of such equipment or system and is not directly related to construction services.

I. Employees engaged in work which is ancillary to Project Work, including work performed pursuant to contracts with electric utilities, gas utilities, telephone companies, and railroads, except that it is understood these entities and their employees may only install their work to a pre-determined demarcation point, e.g., a telephone closet or utility vault, the location of which is determined prior to construction. Employees of such entities shall not be used to replace or displace employees, represented by the affiliated local unions on Project Work.

#### **SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES**

This Agreement shall not apply to those parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor which do not perform Project Work. It is agreed that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among the Authority, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, or any Contractor. The Agreement shall further not apply to New York State, or State Authority, or entity other than the Authority and nothing contained herein shall be construed to prohibit or restrict the Authority or its employees, or any State, City or other municipal or State entity and its employees, from performing on or off-site work related to the Project Work.

As the contracts involving Project Work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned in writing (copy

to Local Union involved) by the Authority or CONSTRUCTION MANAGER OR GENERAL CONTRACTOR for performance under the terms of this Agreement.

**ARTICLE 4- UNION RECOGNITION AND EMPLOYMENT**

**SECTION 1. PRE-HIRE RECOGNITION**

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all employees who are performing on-site Project Work, with respect to that work.

**SECTION 2. UNION REFERRAL**

A. The Contractors agree to utilize, employ and hire craft employees for Project Work covered by this Agreement through the job referral systems and hiring halls established in the Local Unions' area Collective Bargaining Agreements. Notwithstanding this, Contractors shall have the sole right to determine the competency of all referrals; to determine the number of employees required; to select employees for layoff (subject to Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union, subject to the show-up payments. In the event that a Local Union is unable to fill any request for qualified employees within a 48 hour period after such requisition is made by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of craft employees hired for Project Work within its jurisdiction from any source other than referral by the Union.

B. A Contractor, not signatory to any Schedule A CBAs, may request by name, its core employee(s) and the Local will honor, referral of persons who have applied to the Local for



Project Work and who meet the following qualifications:

- (1) possess any license required by New York State law for the Project Work to be performed;
- (2) have worked a total of at least 1000 hours in the construction field during the prior 3 years; and
- (3) were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award.

No more than twelve per centum (12%) of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above. Under this provision, name referrals begin with the eighth employee needed and continue on that same basis.

C. A certified MWBE contractor not signatory to any Schedule A CBAs may request by name its core employee(s) that meet the following qualifications, in accordance with sub-paragraphs D (1) and (2) below.

- (1) possess any license required by New York State law for the Project Work to be performed;
- (2) have worked a total of at least 1000 hours in the construction field during the prior 3 years; and
- (3) were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award.

D. Notwithstanding Section 2(B) above,

- 1) For prime contracts up to \$3,000,000, in any case where the first two or more employees are hired simultaneously, the certified MWBE's core employees may be the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> selections. In any case where the first two or more employees are not hired simultaneously, the MWBE's core employees may be the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> selections.

- 2) For subcontracts up to \$2,000,000 in any case where the first two or more employees are hired simultaneously, the certified MWBE's core employees may be the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> selections. In any case where the first two or more employees are not hired simultaneously, the MWBE's core employees may be the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> selections.

E. Where a certified MWBE Contractor voluntarily enters into a Collective Bargaining Agreement ("CBA") with a BCTC Union, the employees of such Contractor at the time the CBA is executed shall be allowed to join the Union for the applicable trade subject to satisfying the Union's basic standards of proficiency for admission.

F. The Parties recognize that the Project will require large numbers of craft personnel and other supporting workers. It is, therefore, the explicit understanding and intention of the Parties to use the opportunities provided by the length of the Project and the extensive amount of work to be covered by the Labor Agreement to identify and promote, through cooperative efforts, programs, procedures, and ways to assist interested local residents in the surrounding communities of the Project, especially disadvantaged residents, in pursuing careers in the construction industry through apprenticeship programs. These efforts may include, for example, programs to prepare persons for entrance into formal apprenticeship programs such as pre-apprenticeship programs utilizing the Building and Construction Trades Council's Edward J. Malloy Initiative for Construction Skills, and any program that may be offered the Authority or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and outreach programs to the community describing opportunities available as a result of the Project.

G. Upon requests of Contractors, the Local Unions that operate work referral systems will give preference to local community residents in their respective Local Unions for referral to

work for Contractors performing Project Work, to the extent permitted by law. Each affiliate receiving such a request will process the request expeditiously and will refer local community residents, to the extent available, to the requesting Contractor. The Authority, its designee and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR may facilitate such referrals by, among other things, maintaining and regularly sharing with the Local Unions a local referral registry which may be utilized by the Authority, its designee and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR to refer qualified local community residents, provided, however, that nothing contained herein shall supersede any legal obligation of any Local Union arising by collective bargaining agreement or otherwise. The Labor Management Committee established under Article 8 may review any problem with requests under this paragraph or administrator action of the local referral registry but such will not be a condition to a grievance under Article 9.

H. To the extent permitted by the local union referral systems, employees affiliated with a local union working for a certified MWBE Contractor under the terms of this PLA may be requested by the certified MWBE non-union contractor by name to transfer with that contractor to any other job governed by this PLA, or a PLA substantially similar to this PLA governing the Authority's work, consistent with the provisions of subparagraph D 1.) and 2.) of this Article.

### **SECTION 3. NON-DISCRIMINATION IN REFERRALS**

The Council represents that each Local Union hiring hall and referral system will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations that require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject

to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.

**SECTION 4. MINORITY AND FEMALE REFERRALS**

In the event a Local Union either fails, or is unable to refer qualified minority or female applicants in percentages equaling the workforce participation goals adopted by the Authority and set forth in the Authority's bid specifications, within 48 hours of the request for same, the Contractor may employ qualified minority or female applicants from any other available source.

**SECTION 5. CROSS AND QUALIFIED REFERRALS**

The Local Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

**SECTION 6. UNION DUES**

All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Schedule A local agreements, as amended from time to time, but only for the period of time during which they are performing on-site Project Work and only to the extent of tendering payment of the applicable union dues and assessments uniformly required for union membership in the Local Unions which represent the craft in which the employee is performing Project Work. No employee shall be discriminated against at any Project Work site because of the employee's union membership or lack thereof. In the case of

unaffiliated employees, the dues payment will be received by the Local Unions as an agency shop fee.

## **SECTION 7. CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor except where otherwise provided by specific provisions of an applicable Schedule "A," and provided that all craft forepersons shall be experienced and qualified journeypersons in their trade as determined by the appropriate Local Union. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local Collective Bargaining Agreement prohibits a foreperson from working when the craft persons he is leading exceed a specified number.

## **ARTICLE 5- UNION REPRESENTATION**

### **SECTION 1. LOCAL UNION REPRESENTATIVE**

Each Local Union representing on-site employees shall be entitled to designate in writing (copy to Contractor involved and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR) one representative, and/or the Business Manager, who shall be afforded access to the Project Work site with a CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or Contractor provided escort but who shall not disrupt or interrupt the work of employees on the Project.

### **SECTION 2. STEWARDS**

A. Each Local Union shall have the sole discretion to select and designate any working journey person as a Steward and an alternate Steward. The Union shall notify the

CONSTRUCTION MANAGER OR GENERAL CONTRACTOR as well as the Contractor of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. All Stewards shall be working Stewards.

B. In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's trade and, if applicable, subcontractors of their Contractor, but not with the employees of any other trade Contractor. No Contractor shall discriminate against the Steward in the proper performance of Union duties.

C. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule A provision providing procedures for the equitable distribution of overtime.

### **SECTION 3. LAYOFF OF A STEWARD**

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a Schedule "A" provision, such provision shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

## **ARTICLE 6- MANAGEMENT'S RIGHTS**

### **SECTION 1. RESERVATION OF RIGHTS**

Except as expressly limited by a specific provision of this Agreement, Contractors

retain full and exclusive authority for the management of their operations including, but not limited to, the right to: direct the work force, including determination as to the number of employees to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; require compliance with the directives of the Authority or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, including standard restrictions related to security and access to the site that are equally applicable to Authority or CONSTRUCTION MANAGER OR GENERAL CONTRACTOR employees, guests, or vendors; or the discipline or discharge for just cause of its employees; assign and schedule work; promulgate reasonable Project Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices that limit or restrict productivity or efficiency of the individual as determined by the Contractor, Authority and/or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall be permitted or observed.

## **SECTION 2. MATERIALS, METHODS & EQUIPMENT**

There shall be no limitation or restriction upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source; provided, however, that where there is a Schedule "A" that includes a lawful union standards and practices clause, then such clause as set forth in Schedule A Agreements will be complied with, unless there is a lawful contract specification issued by the Authority in

accordance with the Authority's Procurement Contract Guidelines, for the Project that specifically limits or restricts the Contractor's choice of materials, techniques, methods, technology or design, or, requires the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices, and which would prevent compliance with such Schedule A clause. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is performed off-site for Project Work.

**ARTICLE 7- WORK STOPPAGES AND LOCKOUTS**

**SECTION 1. NO STRIKES-NO LOCK OUT**

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other disruptive activity at the Project Work site for any reason by any Union or employee against any Contractor or employer. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the operation of the Project Work, the objectives of the Authority and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR at any Project Work site or otherwise interferes with the operations of the Authority's construction Client. In addition, failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to this Agreement, or the picket or demonstration line of any other organization, at or in immediate proximity to a Project Work site where the failure to cross disrupts or interferes with the operation of Project Work is a violation of this Article. Should any employees breach this provision, the Unions will use their



best efforts to try to immediately end that breach and return all employees to work. There shall be no lockout at a Project Work site by any signatory Contractor, Authority or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR. Contractors and Unions shall use their best efforts to ensure compliance with this Section 1 and to ensure uninterrupted construction and the free flow of traffic in the Project area for the duration of this Agreement.

## **SECTION 2. DISCHARGE FOR VIOLATION**

A Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

## **SECTION 3. NOTIFICATION**

If a Contractor contends that any Union has violated this Article, it will notify the Local Union involved advising of such fact, with copies of the notification to the Council. The Local Union shall instruct and order, the Council shall request, and each shall otherwise use their best efforts to cause, the employees (and where necessary the Council shall use its best efforts to cause the Local Union), to immediately cease and desist from any violation of this Article. If the Council complies with these obligations it shall not be liable for the unauthorized acts of a Local Union or its members. Similarly, a Local Union and its members will not be liable for any unauthorized acts of the Council. Failure of a Contractor or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR to give any notification set forth in this Article shall not excuse any violation of Section 1 of this Article.

## **SECTION 4. EXPEDITED ARBITRATION**

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or

equity) that may be brought.

A. A party invoking this procedure shall notify Jack Tillem or J.J. Pierson, who shall alternate (beginning with Arbitrator Tillem) as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 24 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to the alleged violator and Council.

B. The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Council and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, hold a hearing within 48 hours of receipt of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice required by Section 3, above.

C. All notices pursuant to this Article may be provided by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor, CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and Local Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.

D. The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or

mitigation of such violation or to award damages (any damages issue is reserved solely for court proceedings, if any.) The Award shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

E. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and Authority may participate in full in all proceedings under this Article.

F. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union or Contractor involved, and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR.

G. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.

H. The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

#### **SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION**

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

**ARTICLE 8 - LABOR MANAGEMENT COMMITTEE**

**SECTION 1. SUBJECTS**

The Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations among the Contractors and Unions; 2) enhance safety awareness, cost effectiveness and productivity of construction operations; 3) protect the public interests; 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; 5) review efforts to meet applicable participation goals for MWBEs and workforce participation goals for minority and female employees; and 6) review any problem with administration of the local referral registry or requests under Article 4, Section 2, paragraph G.

**SECTION 2. COMPOSITION**

The Committee shall be jointly chaired by the President of the Authority, or his designee, the President of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, or a designee, and the President of the Council, or his designee. It may include representatives of the Local Unions and Contractors involved in the issues being discussed. The parties may mutually designate an MWBE representative to participate in appropriate Committee discussions. The Committee may conduct business through mutually agreed upon sub-committees.

**ARTICLE 9- GRIEVANCE & ARBITRATION PROCEDURE**

**SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES**

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure of the steps described below, provided, in all cases, that the question, dispute or claim

arose during the term of this Agreement.

**Step 1:**

(a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union business representative or job steward give notice of the claimed violation to the work site representative of the involved Contractor and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR. To be timely, such notice of the grievance must be given within 7 calendar days after the act, occurrence or event giving rise to the grievance. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, employee and Contractor directly involved unless the settlement is accepted in writing by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, as creating a precedent.

(b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article 7, Section 1) with any other signatory to this Agreement and, if after conferring, a settlement is not reached within 7 calendar days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

**Step 2:**

The Business Manager or designee of the involved Local Union, together with representatives of the involved Contractor, Council and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR (or designee), shall meet in Step 2 within 7 calendar days of service of the written grievance to arrive at a satisfactory settlement.

**Step 3:**

(a) If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within 21 calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants, including the Construction Manager or designee) to Jack Tillem or J.J. Pierson, who shall act, alternately (beginning with Arbitrator J.J. Pierson), as the Arbitrator under this procedure. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union and employees and the fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union.

(b) Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by written consent of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR (or designee), involved Contractor and involved Local Union at the particular step where the extension is agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

**SECTION 2. LIMITATION AS TO RETROACTIVITY**

No arbitration decision or award may provide retroactivity of any kind exceeding 60 calendar days prior to the date of service of the written grievance on the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and the involved Contractor or Local Union.

**SECTION 3. PARTICIPATION BY AUTHORITY AND/OR CONSTRUCTION MANAGER OR GENERAL CONTRACTOR**

The Authority and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these Steps, including Step 3 arbitration.

**ARTICLE 10 - JURISDICTIONAL DISPUTES**

**SECTION 1. NO DISRUPTIONS**

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractor. No jurisdictional dispute shall excuse a violation of Article 7.

**SECTION 2. ASSIGNMENT**

All Project Work assignments shall be made by the Contractor to unions affiliated with the BCTC consistent with the New York Plan for the Settlement of Jurisdictional Disputes ("New York Plan") and its Greenbook decisions, if any. Where there are no applicable Greenbook decisions, assignments shall be made in accordance with the provisions of the New York Plan and local industry practice. The New York Plan for the Settlement of Jurisdictional Disputes ("New York Plan") shall apply to the settlement of all jurisdictional disputes involving

all Project work. The New York Plan shall apply to any and all Contractors, subcontractors and unions performing Project work.

**SECTION 3. NO INTERFERENCE WITH WORK**

There shall be no interference or interruption of any kind with the Project Work while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the Contractor until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award.

**ARTICLE 11 - WAGES AND BENEFITS**

**SECTION 1. CLASSIFICATION AND BASE HOURLY RATE**

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the base hourly wage and fringe benefit rates applicable to those classifications as specified in the attached Schedule A, as amended during the term of this Agreement.

**SECTION 2. EMPLOYEE BENEFITS**

A. The Contractors agree to pay on a timely basis contributions on behalf of all employees covered by this Agreement to those legally established jointly trustee employee benefit funds designated in Schedule A (in the appropriate Schedule A amounts), provided that such benefits are required to be paid on public works under any applicable prevailing wage law. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly required under applicable prevailing wage law. Contractors, not otherwise contractually bound to do so, shall not be



required to contribute to benefits, trusts or plans of any kind that are not required by the prevailing wage law, provided, however, that this provision does not relieve Contractors signatory to local collective bargaining agreement with any affiliated union from complying with the fringe benefit requirements for all funds contained in the CBA.

B. The Contractors agree to be bound by the written terms of the legally established jointly trustee Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Project Work done under this Agreement and only for those employees to whom this Agreement requires such benefit payments. Core employees that may remain unaffiliated with any local union at the completion of their employment under the terms of this PLA, may apply for any distributions to which they may be entitled from the Funds that they have participated under the terms of this agreement. Any such distributions will be fully compliant with ERISA and the rules of the relevant Trust Fund. Each Local Union agrees to provide the Authority and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR with a complete copy of the governing documents for each Trust Fund within ten business days of a request for such documents.

C. In consideration of the unions' waiver of their rights to withhold labor from a contractor or subcontractor delinquent in the payment of fringe benefits contributions ("Delinquent Contractor"), any such union and/or fringe benefit fund shall notify the Authority, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and the Delinquent Contractor in writing with back-up documentation that the Delinquent Contractor has failed to make fringe benefit contributions to it as provided herein. Should the Delinquent Contractor fail, within ten (10) calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the union and/or fringe benefit fund is in dispute, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall withhold from amounts

then or thereafter becoming due and payable to the Delinquent Contractor an amount equal to that portion of such payment due to the Delinquent Contractor that relates solely to the work performed by the Delinquent Contractor which the union or fringe benefit fund claims to be due it. Upon notification by the Delinquent Contractor and the Union / Trust Fund that the dispute has been resolved, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall release the funds withheld to the Delinquent Contractor and the Union/Trust Fund via a two party or joint check, upon receipt of appropriate releases from the parties. In the event the dispute is not resolved within thirty (30) days of the start of the withholding by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR may commence an interpleader action to determine entitlement to withhold funds in accordance with the Civil Practice Laws and Rules of New York.

**ARTICLE 12- HOURS OF WORK, PREMIUM PAYMENTS,  
SHIFTS AND HOLIDAYS**

**SECTION 1. WORK WEEK AND WORK DAY**

A. The standard work week shall consist of 40 hours of work at straight time rates, Monday through Friday, 8 hours per day, plus ½ hour unpaid lunch period.

B. In accordance with Project needs, there shall be flexible start times with advance notice from the Contractor to the Union. The Day Shift shall commence between the hours of 6:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 5:30 p.m. for and eight (8) hour day, and up to 7:30 p.m. for a ten (10) hour day. The Evening Shift shall commence between the hours of 3:00 p.m. and 6:00 p.m., unless different times are necessitated by the Authority's or the CONSTRUCTION MANAGER'S OR GENERAL CONTRACTOR'S phasing plans on specific projects. The Night Shift shall commence between the hours of 11:00 p.m. and 2:00 a.m., unless different times are necessitated by the Authority's or the

CONSTRUCTION MANAGER'S OR GENERAL CONTRACTOR'S phasing plans on specific projects. Subject to the foregoing, starting and quitting times shall occur at the Project Work site designated by the Contractor.

C. Notwithstanding any other provision of this Agreement, at the commencement of the job and with the Authority's approval, a contractor may schedule at the commencement of the job, a four day work week, ten (10) hours per day, four consecutive days, Monday through Thursday at straight time rates.

D. Notice - Contractors shall provide not less than 5 days prior notice to the Local Union involved as to the work week and work hour schedules to be worked or such lesser notice as may be mutually agreed upon.

## **SECTION 2. OVERTIME**

Overtime shall be paid for any work over eight (8) hours in a day where 5/8s is scheduled or for work over ten (10) hours in a day where 4/10s is scheduled and over forty (40) hours in a week and will be paid at time and one half (1 ½) Monday through Saturday. All overtime work performed on Sunday and Holidays will be paid per Schedule A. There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who shall be worked, including the use of employees, other than those who have worked the regular or scheduled work week, at straight time rates. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

## **SECTION 3. SHIFTS**

A. Flexible Schedules - Scheduling of on-site shift work, including Saturday

and Sunday work, shall be within the discretion of the Contractor in order to meet Project Work schedules and existing Project Work conditions including the minimization of interference with the mission of the Authority's Client. It is not necessary to work a day shift in order to schedule a second or third shift, or a second shift in order to schedule a third shift, or to schedule all of the crafts when only certain crafts or employees are needed. Shifts must have prior approval of the Authority, and must be scheduled for not less than five (5) consecutive work days and with not less than five (5) work days notice to the Local Union or such lesser notice as may be mutually agreed upon.

B. Second and/or Third Shifts/Saturday and/or Sunday Work - The second shift for onsite work shall start between 3 p.m. and 6 p.m. and the third shift shall start between 11 p.m. and 2 a.m., subject to different times necessitated by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or Authority phasing plans on the project. There shall be no reduction in shift hour work. With respect to second and third shift work there shall be a five percent (5%) shift premium unless a Schedule A CBA provides for a lesser rate on shifts.

C. Flexible Starting Times - Shift starting times will be adjusted by the Contractor as necessary to fulfill Project Work requirements subject to the notice requirements of paragraph A.

**SECTION 4. HOLIDAYS**

A. Schedule - There shall be 8 recognized holidays on the Project:

- |                        |                  |
|------------------------|------------------|
| New Years Day          | Labor Day        |
| Martin Luther King Day | President's Day  |
| Memorial Day           | Thanksgiving Day |
| Independence Day       | Christmas Day    |

All said holidays shall be observed on the calendar date except those holidays which occur on Sunday shall be observed on the following Monday.

B. Payment - Regular holiday pay, if any, for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

C. Exclusivity - No holidays other than those listed in Section 4(A) above shall be recognized or observed, provided however, it is agreed that Christmas Eve and New Years Eve shall be observed pursuant to the Schedule A Agreements.

### **SECTION 5. SATURDAY MAKE-UP DAYS**

Where severe weather resulting in a state or local officially declared weather emergency, power failure, fire or natural disaster or other similar circumstances beyond the control of the Contractor, results in the loss of an entire work day on a regularly scheduled weekday, the Contractor may schedule a Saturday make-up day and such time shall be scheduled and paid as if performed on a weekday. Any other Saturday work shall be paid at time and one half (1 ½) unless the Schedule A permits straight time. The Contractor shall notify the Local Union on the missed day or as soon thereafter as practical if such make-up day is to be worked.

### **SECTION 6. REPORTING PAY**

A. Employees who report to the work location pursuant to their regular schedule and who are not provided with work shall be paid two hours reporting pay at straight time rates. An employee whose work is terminated early by a Contractor due to severe weather, power failure, fire or natural disaster or for similar circumstances beyond the Contractor's control, shall receive pay only for such time as is actually worked. In other instances in which an employee's work is terminated early (unless provided otherwise elsewhere in this Agreement),

the employee shall be paid for his full shift.

B. When an employee, who has completed their scheduled shift and left the Project Work site, is "called out" to perform special work of a casual, incidental or irregular nature, the employee shall receive overtime pay at the rate of time and one-half of the employee's straight time rate for hours actually worked.

C. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 7 below, they shall be paid only for the actual time worked.

D. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty, high time or other special premium payments or reduction in shift hours of any kind.

E. There shall be no pay for time not actually worked except as specifically set forth in this Article and except where an applicable Schedule A requires a full weeks' pay for forepersons.

#### **SECTION 7. PAYMENT OF WAGES**

A. Termination- Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.

#### **SECTION 8. EMERGENCY WORK SUSPENSION**

A Contractor may, if considered necessary for the protection of life and/or safety of employees or others, suspend all or a portion of Project Work. In such instances, employees will be paid for actual time worked, except that when a Contractor requests that employees remain at the job site available for work, employees will be paid for that time at their hourly rate

of pay.

**SECTION 9. INJURY/DISABILITY**

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties provided there is still Project Work available for which the employee is qualified and able to perform.

**SECTION 10. TIME KEEPING**

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

**SECTION 11. MEAL PERIOD**

A Contractor shall schedule an unpaid meal period of not more than 1/2 hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts or which provides for staggered lunch periods within a craft or trade. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A.

**SECTION 12. BREAK PERIODS**

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location. Where 4/10s are being worked there shall be a morning and afternoon coffee break.

**ARTICLE 13 - APPRENTICES**

**SECTION 1. RATIOS**

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices and such other appropriate classifications in the maximum ratio permitted by the New York State Department of Labor or the maximum allowed per trade. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Schedule A. The parties encourage, as an appropriate source of apprentice recruitment consistent with the rules and operations of the affiliated unions' apprentice-programs, the use of the Edward J. Malloy Initiative for Construction Skills, Non-Traditional Employment for Women and Helmets to Hardhats.

**ARTICLE 14-SAFETY PROTECTION OF PERSON AND PROPERTY**

**SECTION 1. SAFETY REQUIREMENTS**

Each Contractor will ensure that applicable OSHA and safety requirements are at all times maintained on the Project Work site and the employees and Unions agree to cooperate fully with these efforts to the extent consistent with their rights and obligations under the law. Employees will cooperate with employer safety policies and will perform their work at all times in a safe manner and protect themselves and the property of the Contractor, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, the Authority's construction Client, and the Authority, from injury or harm, to the extent consistent with their rights and



obligations under the law. Failure to do so will be grounds for discipline, including discharge.

## **SECTION 2. CONTRACTOR RULES**

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by the Contractors and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR for this Project Work. Such rules will be published and posted in conspicuous places throughout the Project Work sites. Any site security and access policies established by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR intended for specific application to the construction workforce for Project Work and that are not established pursuant to an Authority directive shall be implemented only after notice to the BCTC and its affiliates and an opportunity for negotiation and resolution by the Labor Management Committee.

## **SECTION 3. INSPECTIONS**

The Contractors and CONSTRUCTION MANAGER OR GENERAL CONTRACTOR retain the right to inspect incoming and outgoing shipments of equipment, apparatus, machinery and construction materials of every kind.

### **ARTICLE 15 - TEMPORARY SERVICES**

Temporary services shall only be required upon the specific request of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and when so requested shall be assigned to the appropriate trade with jurisdiction. Temporary system coverage shall be provided by the appropriate Contractors' existing employees during working hours in which a shift is scheduled for employees of this Contractor. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or Authority may determine the need for temporary system coverage requirements during non-working hours. There shall be no stacking of trades on

temporary services. In the event a temporary system is claimed by multiple trades, the matter shall be resolved through the New York Plan for Jurisdictional Disputes.

**ARTICLE 16 - NO DISCRIMINATION**

**SECTION 1. COOPERATIVE EFFORTS**

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of creed, race, color, religion, sex, sexual orientation, national origin, marital status, citizenship status, disability, age or any other status provided by law, in any manner prohibited by law or regulation.

**SECTION 2. LANGUAGE OF AGREEMENT**

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

**ARTICLE 17- GENERAL TERMS**

**SECTION 1. PROJECT RULES**

A. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and the Contractors shall establish such reasonable Project Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work. These rules will be explained at the pre-job conference and posted at the Project Work sites and may be amended thereafter as necessary. Notice of amendments will be provided to the appropriate Local Union. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

B. The parties adopt and incorporate the BCTC's Standards of Excellence as

annexed hereto as Exhibit "B."

**SECTION 2. TOOLS OF THE TRADE**

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

**SECTION 3. SUPERVISION**

Employees shall work under the supervision of the craft foreperson or general foreperson.

**SECTION 4. TRAVEL ALLOWANCES**

There shall be no payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

**SECTION 5. FULL WORK DAY**

Employees shall be at their work area at the starting time established by the Contractor, provided they are provided access to the work area. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

**SECTION 6. COOPERATION AND WAIVER**

The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, Contractors and the Unions will cooperate in seeking any NYS Department of Labor, or any other government, approvals that may be needed for implementation of any terms of this Agreement. In addition, the Council, on their own behalf and on behalf of its participating affiliated Local Unions and their individual members, intend the provisions of this Agreement to

control to the greatest extent permitted by law, notwithstanding contrary provisions of any applicable prevailing wage, or other, law and intend this Agreement to constitute a waiver of any such prevailing wage, or other, law to the greatest extent permissible only for work within the scope of this Agreement, including specifically, but not limited to those provisions relating to shift, night, and similar differentials and premiums. This Agreement does not, however, constitute a waiver or modification of the prevailing wage schedules applicable to work not covered by this Agreement.

**ARTICLE 18. SAVINGS AND SEPARABILITY**

**SECTION 1. THIS AGREEMENT**

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or if such application may cause the loss of Project funding or any New York State Labor Law exemption for all or any part of the Project Work, the provision or provisions involved (and/or its application to particular Project Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the remainder of the Agreement shall remain in full force and effect to the extent allowed by law (and to the extent no funding or exemption is lost), unless the part or parts so found to be in violation of law or to cause such loss are wholly inseparable from the remaining portions of the Agreement and/or are material to the purposes of the Agreement. In the event a court of competent jurisdiction finds any portion of the Agreement to trigger the foregoing, the parties will immediately enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the court determination and the intent of the parties hereto for contracts to be let in the future.

**SECTION 2. THE BID SPECIFICATIONS**

In the event that the Authority's, CONSTRUCTION MANAGER'S OR GENERAL CONTRACTOR'S bid specifications, or other action, requiring that a successful bidder (and subcontractor) become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or may cause the loss of project funding or any New York State Labor Law exemption for all or any part of the Project Work, such requirement (and/or its application to particular Project Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the Agreement shall remain in full force and effect to the extent allowed by law and to the extent no funding or exemption is lost. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in construction only where the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and Contractor voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court or other action taken and the intent of the parties for contracts to be let in the future.

**SECTION 3. NON-LIABILITY**

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the Authority, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, any Contractor, nor any Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order or injunction, other determination, or in order to maintain funding or a New York State Labor Law exemption for Project Work. Bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

**SECTION 4. NON-WAIVER**

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to signatory Contractors and signatory Unions.

**ARTICLE 19 - FUTURE CHANGES IN SCHEDULE "A" AREA CONTRACTS**

**SECTION 1. CHANGES TO AREA CONTRACTS**

A. Schedule "A" to this Agreement shall continue in full force and effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements that are the basis for Schedule A notify the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR in writing of the hourly rate changes agreed to in that Area Collective Bargaining that are applicable to work covered by this Agreement and their effective dates.

B. It is agreed that any provisions negotiated into Schedule A collective bargaining agreements will not apply to work under this Agreement if such provisions are less favorable to those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied on Project Work if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

C. Any disagreement between signatories to this Agreement over the incorporation into Schedule A of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

**SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS**

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the

Project Work by any Local Union involved in the renegotiation of Area Local Collective Bargaining Agreements nor shall there be any lock-out on such Project Work affecting a Local Union during the course of such renegotiations.

**ARTICLE 20 - WORKERS' COMPENSATION ADR**

**SECTION 1.**

An ADR program may be negotiated and participation in the ADR Program will be optional by trade.

**ARTICLE 21 - HELMETS TO HARDHATS**

**Section 1.**

The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

**Section 2.**

The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective  
as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**FOR BUILDING AND CONSTRUCTION TRADES COUNCIL  
OF GREATER NEW YORK AND VICINITY**

BY: \_\_\_\_\_  
**GARY LABARBERA, President**

**[CONSTRUCTION MANAGER OR GENERAL CONTRACTOR]**

BY: \_\_\_\_\_  
**Executive Officer,**



**FOR THE LOCAL UNIONS:**

Boiler Makers Local No. 5

By: \_\_\_\_\_

Date: \_\_\_\_\_

Carpenters District Council

By: \_\_\_\_\_

Date: \_\_\_\_\_

Concrete Workers District Council No. 16

By: \_\_\_\_\_

Date: \_\_\_\_\_

Cement Masons No. 780

By: \_\_\_\_\_

Date: \_\_\_\_\_

Drywall Tapers 1974 DC 9

By: \_\_\_\_\_

Date: \_\_\_\_\_

Derrickmen and Riggers Local Union No. 197

By: \_\_\_\_\_

Date: \_\_\_\_\_

Elevator Constructors No. 1

By: \_\_\_\_\_

Date: \_\_\_\_\_

Electrical Local No. 3

By: \_\_\_\_\_

Date: \_\_\_\_\_

Glaziers Local Union No. 1281 DC 9

By: \_\_\_\_\_

Date: \_\_\_\_\_

Heat & Frost Insulators  
Local Union No. 12

By: \_\_\_\_\_

Date: \_\_\_\_\_

Heat & Frost Insulators Local Union No. 12A

By: \_\_\_\_\_

Date: \_\_\_\_\_

Laborers Local 1010  
Pavers and Road Builders District Council

By: \_\_\_\_\_

Date: \_\_\_\_\_

Iron Workers Local No. 40

By: \_\_\_\_\_

Date: \_\_\_\_\_

Plumbers No. 1

By: \_\_\_\_\_

Date: \_\_\_\_\_

DASNY RENOVATION AND REHABILITATION PLA

Local 79 Construction and General Building Laborers

By: \_\_\_\_\_

Date: \_\_\_\_\_

Metal Lathers Local No. 46

By: \_\_\_\_\_

Date: \_\_\_\_\_

Metal Polishers District Council #9

By: \_\_\_\_\_

Date: \_\_\_\_\_

Painters District Council # 9

By: \_\_\_\_\_

Date: \_\_\_\_\_

Painters, Decorators & Wallcoverers DC 9

By: \_\_\_\_\_

Date: \_\_\_\_\_

Painters Structural Steel No. 806

By: \_\_\_\_\_

Date: \_\_\_\_\_

Ornamental Iron Workers No. 580

By: \_\_\_\_\_

Date: \_\_\_\_\_

Iron Workers District Council

By: \_\_\_\_\_

Date: \_\_\_\_\_

Iron Workers Local No. 361

By: \_\_\_\_\_

Date: \_\_\_\_\_

Laborers Local No. 29 Blasters and Drillers

By: \_\_\_\_\_

Date: \_\_\_\_\_

Laborers Local No. 78 Asbestos & Lead Abatement

By: \_\_\_\_\_

Date: \_\_\_\_\_

Laborers Local No. 731 Excavators

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mason Tenders District Council

By: \_\_\_\_\_

Date: \_\_\_\_\_

Steamfitters Local Union No. 638

By: \_\_\_\_\_

Date: \_\_\_\_\_

DASNY RENOVATION AND REHABILITATION PLA

Roofers & Waterproofers  
No. 8

By: \_\_\_\_\_

Date: \_\_\_\_\_

Sheet Metal Workers Local No. 28

By: \_\_\_\_\_

Date: \_\_\_\_\_

Teamsters Local Union 814

By: \_\_\_\_\_

Date: \_\_\_\_\_

Plasterers Local Union No. 262

By: \_\_\_\_\_

Date: \_\_\_\_\_

Teamsters Local 282

By: \_\_\_\_\_

Date: \_\_\_\_\_

Sheet Metal Workers Local  
No. 137

By: \_\_\_\_\_

Date: \_\_\_\_\_

Teamsters Local No. 813 Private Sanitation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Teamsters Local No. 282

By: \_\_\_\_\_

Date: \_\_\_\_\_

Tile, Marble & Terrazzo B.A.C. Local  
Union No. 7

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**

**Project Labor Agreement - - Letter of Assent**

The undersigned party confirms that it agrees to be a party to and be bound by the Project Labor Agreement Covering Specified Construction and Renovation Work at the PROJECT LOCATED AT \_\_\_\_\_, as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project known as:

\_\_\_\_\_

and located at:

\_\_\_\_\_

(hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the Project Labor Agreement, a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all schedules; amendments and supplements now existing or which are later made thereto.
- (2) Agrees to be bound by the legally established collective bargaining agreements and local trust agreements as set forth in the Project Labor Agreement and this Agreement but only to the extent of Project Work and as required by the PLA.
- (3) Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor but only to the extent of Project Work as required by the PLA.
- (4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier subcontractor it has engaged or may engage to work on the Project. Labor harmony disputes/issues shall be subject to the Labor Management Committee provisions.
- (5) Agrees to secure from any Contractor(s) (as defined in said Agreement) which is or becomes a Subcontractor (of any tier), to it, a duly executed Agreement to be Bound in form identical to this document.

Provide description of work; identify craft jurisdiction(s) and all contract numbers below:

Name of Contractor or subcontractor: \_\_\_\_\_

Authorized Officer & Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contractors State License #: \_\_\_\_\_

Entity your company is contracted with and address: \_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2012

Dated: \_\_\_\_\_

Execut \_\_\_\_\_  
Notary Public

**EXHIBIT “B”**

**NEW YORK BUILDING AND CONSTRUCTION TRADES COUNCIL**

**STANDARDS OF EXCELLENCE**

The purpose of this Standard of Excellence is to reinforce the pride of every construction worker and the commitment to be the most skilled, most productive and safest workforce available to construction employers and users in the City of New York. It is the commitment of every affiliated local union to use our training and skills to produce the highest quality work and to exercise safe and productive work practices.

The rank and file members represented by the affiliated local unions acknowledge and adopt the following standards:

- ***Provide a full day's work for a full day's pay;***
- ***Safely work towards the timely completion of the job;***
- ***Arrive to work on time and work until the contractual quitting time;***
- ***Adhere to contractual lunch and break times;***
- ***Promote a drug and alcohol free work site;***
- ***Work in accordance with all applicable safety rules and procedures;***
- ***Allow union representatives to handle job site disputes and grievances without resort to slowdowns, or unlawful job disruptions;***
- ***Respect management directives that are safe, reasonable and legitimate;***
- ***Respect the rights of co-workers;***
- ***Respect the property rights of the owner, management and contractors.***

The Unions affiliated with the New York City Building and Construction Trades Council will expect the signatory contractors to safely and efficiently manage their jobs and the unions see this as a corresponding obligation of the contractors under this Standard of Excellence. The affiliated unions will expect the following from its signatory contractors:

- ***Management adherence to the collective bargaining agreements;***
- ***Communication and cooperation with the trade foremen and stewards;***
- ***Efficient, safe and sanitary management of the job site;***
- ***Efficient job scheduling to mitigate and minimize unproductive time;***
- ***Efficient and adequate staffing by properly trained employees by trade;***
- ***Efficient delivery schedules and availability of equipment and tools to ensure efficient job progress;***
- ***Ensure proper blueprints, specifications and layout instructions and material are available in a timely manner***
- ***Promote job site dispute resolution and leadership skills to mitigate such disputes;***
- ***Treatment of all employees in a respectful and dignified manner acknowledging their contributions to a successful project.***

The affiliated unions and their signatory contractors shall ensure that both the rank and file members and the management staff shall be properly trained in the obligations undertaken in the Standards of Excellence.

SCHEDULE A



**BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that we:

\_\_\_\_\_ as Principal, and  
(Legal Title of the Bidder)

\_\_\_\_\_ 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 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 truly to be made, we hereby jointly and severally bind ourselves, our 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.

**Bid Bond**

---

- 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)	(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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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:
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Procurement Lobby Law - Certification**

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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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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: \_\_\_\_\_

## 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.

## **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.

**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: \_\_\_\_\_

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## **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](http://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.

**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: \_\_\_\_\_



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

### **NEW YORK STATE VENDOR RESPONSIBILITY (CCA-2)**

#### **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](http://www.dasny.org)

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## 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](mailto: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"/> <u>Other</u>	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"/> <u>United States</u>	State			
<input type="checkbox"/> <u>Other</u>	Country			



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

<b>I. BUSINESS CHARACTERISTICS</b>			
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</u> <u>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 Business Entity Official; 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-related 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](http://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](http://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:<br>(i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or<br>(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<br><br><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:*

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: <ul style="list-style-type: none"> <li>• <u>Federal</u>, state or local health laws, rules or regulations;</li> <li>• <u>Federal</u>, state or local environmental laws, rules or regulations;</li> <li>• Unemployment insurance or workers compensation coverage or <u>claim</u> requirements;</li> <li>• Any labor law or regulation, which was deemed willful;</li> <li>• Employee Retirement Income Security Act (ERISA);</li> <li>• <u>Federal</u>, state or local human rights laws;</li> <li>• <u>Federal</u>, state or local security laws?</li> </ul>	<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:*

8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 <u>Suspended, debarred or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
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?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> </ul>	<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)

<b>IX. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>		
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 <a href="http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls">www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls</a> . (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:**

<b>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:</b>						
<b>1.</b>	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	
<b>2.</b>	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	
<b>3.</b>	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	
<b>4.</b>	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	
<b>5.</b>	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:**

<b>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:</b>						
<b>6.</b>	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	
<b>7.</b>	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	
<b>8.</b>	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	
<b>9.</b>	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	
<b>10.</b>	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:**

<b>Question 3.1: List all current uncompleted construction contracts:</b>								
<b>1.</b>	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		
<b>2.</b>	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		
<b>3.</b>	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		
<b>4.</b>	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:								
<b>5.</b>	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		
<b>6.</b>	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		
<b>7.</b>	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		
<b>8.</b>	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:**

<b>Question 3.1: List all current uncompleted construction contracts:</b>							
<b>9.</b>	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	
<b>10.</b>	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	
<b>Grand Total All Uncompleted Contracts</b>						<b>\$0.00</b>	

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

13. Other Assets

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

14. TOTAL ASSETS

\$ -

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\$ -

**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			\$ _____



# Instructions for the Requester of Form W-9

(Rev. December 2014)

## Request for Taxpayer Identification Number and Certification

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

### Future Developments

For the latest developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/w9](http://www.irs.gov/w9).

### Reminders

**Foreign Account Tax Compliance Act (FATCA).** FATCA requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Form W-9 and the Instructions for the Requester of Form W-9 have an *Exemptions* box on the front of the form that includes entry for the *Exempt payee code (if any)* and *Exemption from FATCA Reporting Code (if any)*. The references for the appropriate codes are in the *Exemptions* section of Form W-9, and in the *Payees Exempt from Backup Withholding* and *Payees and Account Holders Exempt From FATCA Reporting* sections of these instructions.

The *Certification* section in Part II of Form W-9 includes certification relating to FATCA reporting.

**Payment card and third party network transactions.** References to payments made in settlement of payment card and third party network transactions are included in the *Purpose of Form* section of Form W-9. For more information, see the *Instructions for Form 1099-K, Payment Card and Third Party Network Transactions* on IRS.gov. Also, visit [www.irs.gov/1099k](http://www.irs.gov/1099k).

**Backup withholding rate.** The backup withholding rate is 28% for reportable payments.

**TIN matching e-services.** The IRS website offers TIN Matching e-services for certain payers to validate name and TIN combinations. See *Taxpayer Identification Number (TIN) Matching* on page 4.

### How Do I Know When To Use Form W-9?

Use Form W-9 to request the taxpayer identification number (TIN) of a U.S. person (including a resident alien) and to request certain certifications and claims for exemption. (See *Purpose of Form* on Form W-9.) Withholding agents may require signed Forms W-9 from U.S. exempt recipients to overcome a presumption of foreign status. For federal purposes, a U.S. person includes but is not limited to:

- 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,
- Any estate (other than a foreign estate), or

- A domestic trust (as defined in Regulations section 301.7701-7).

A partnership may require a signed Form W-9 from its U.S. partners to overcome a presumption of foreign status and to avoid withholding on the partner's allocable share of the partnership's effectively connected income. For more information, see Regulations section 1.1446-1.

Advise foreign persons to use the appropriate Form W-8 or Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, for more information and a list of the W-8 forms.

Also, a nonresident alien individual may, under certain circumstances, claim treaty benefits on scholarships and fellowship grant income. See Pub. 515 or Pub. 519, U.S. Tax Guide for Aliens, for more information.

### Electronic Submission of Forms W-9

Requesters may establish a system for payees and payees' agents to submit Forms W-9 electronically, including by fax. A requester is anyone required to file an information return. A payee is anyone required to provide a taxpayer identification number (TIN) to the requester.

**Payee's agent.** A payee's agent can be an investment advisor (corporation, partnership, or individual) or an introducing broker. An investment advisor must be registered with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940. The introducing broker is a broker-dealer that is regulated by the SEC and the National Association of Securities Dealers, Inc., and that is not a payer. Except for a broker who acts as a payee's agent for "readily tradable instruments," the advisor or broker must show in writing to the payer that the payee authorized the advisor or broker to transmit the Form W-9 to the payer.

**Electronic system.** Generally, the electronic system must:

- Ensure the information received is the information sent, and document all occasions of user access that result in the submission;
- Make reasonably certain that the person accessing the system and submitting the form is the person identified on Form W-9, the investment advisor, or the introducing broker;
- Provide the same information as the paper Form W-9;
- Be able to supply a hard copy of the electronic Form W-9 if the Internal Revenue Service requests it; and
- Require as the final entry in the submission an electronic signature by the payee whose name is on Form W-9 that authenticates and verifies the submission. The electronic signature must be under penalties of perjury and the perjury statement must contain the language of the paper Form W-9.



For Forms W-9 that are not required to be signed, the electronic system need not provide for an electronic signature or a perjury statement.

For more details, see the following.

- Announcement 98-27, which is on page 30 of Internal Revenue Bulletin 1998-15 at [www.irs.gov/pub/irs-irbs/irb98-15.pdf](http://www.irs.gov/pub/irs-irbs/irb98-15.pdf).
- Announcement 2001-91, which is on page 221 of Internal Revenue Bulletin 2001-36 at [www.irs.gov/pub/irs-irbs/irb01-36.pdf](http://www.irs.gov/pub/irs-irbs/irb01-36.pdf).

## Individual Taxpayer Identification Number (ITIN)

Form W-9 (or an acceptable substitute) is used by persons required to file information returns with the IRS to get the payee's (or other person's) correct name and TIN. For individuals, the TIN is generally a social security number (SSN).

However, in some cases, individuals who become U.S. resident aliens for tax purposes are not eligible to obtain an SSN. This includes certain resident aliens who must receive information returns but who cannot obtain an SSN.

These individuals must apply for an ITIN on Form W-7, Application for IRS Individual Taxpayer Identification Number, unless they have an application pending for an SSN. Individuals who have an ITIN must provide it on Form W-9.

## Substitute Form W-9

You may develop and use your own Form W-9 (a substitute Form W-9) if its content is substantially similar to the official IRS Form W-9 and it satisfies certain certification requirements.

You may incorporate a substitute Form W-9 into other business forms you customarily use, such as account signature cards. However, the certifications on the substitute Form W-9 must clearly state (as shown on the official Form W-9) that under penalties of perjury:

1. The payee's TIN is correct,
2. The payee is not subject to backup withholding due to failure to report interest and dividend income,
3. The payee is a U.S. person, and
4. The FATCA code entered on this form (if any) indicating that the payee is exempt from FATCA reporting is correct.

You may provide certification instructions on a substitute Form W-9 in a manner similar to the official form. If you are not collecting a FATCA exemption code by omitting that field from the substitute Form W-9 (see [Payees and Account Holders Exempt From FATCA Reporting](#), later), you may notify the payee that item 4 does not apply.

You may not:

1. Use a substitute Form W-9 that requires the payee, by signing, to agree to provisions unrelated to the required certifications, or
2. Imply that a payee may be subject to backup withholding unless the payee agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-9 that contains a separate signature line just for the certifications satisfies the requirement that the certifications be clearly stated.

If a single signature line is used for the required certifications and other provisions, the certifications must be highlighted, boxed, printed in bold-face type, or presented in some other manner that causes the language to stand out from all other information contained on the substitute form. Additionally, the following statement must be presented to stand out in the same manner as described above and must appear immediately above the single signature line:

“The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.”

If you use a substitute form, you are required to provide the Form W-9 instructions to the payee only if he or she requests them. However, if the IRS has notified the payee that backup withholding applies, then you must instruct the payee to strike out the language in the certification that relates to underreporting. This instruction can be given orally or in writing. See item 2 of the *Certification* on Form W-9. You can replace “defined below” with “defined in the instructions” in item 3 of the *Certification* on Form W-9 when the instructions will not be provided to the payee except upon request. For more information, see Rev. Proc. 83-89, 1983-2 C.B. 613; amplified by Rev. Proc. 96-26, which is on page 22 of Internal Revenue Bulletin 1996-8 at [www.irs.gov/pub/irs-irbs/irb96-08.pdf](http://www.irs.gov/pub/irs-irbs/irb96-08.pdf).

## TIN Applied for

For interest and dividend payments and certain payments with respect to readily tradable instruments, the payee may return a properly completed, signed Form W-9 to you with “Applied For” written in Part I. This is an “awaiting-TIN” certificate. The payee has 60 calendar days, from the date you receive this certificate, to provide a TIN. If you do not receive the payee's TIN at that time, you must begin backup withholding on payments.

**Reserve rule.** You must backup withhold on any reportable payments made during the 60-day period if a payee withdraws more than \$500 at one time, unless the payee reserves an amount equal to the current year's backup withholding rate on all reportable payments made to the account.

**Alternative rule.** You may also elect to backup withhold during this 60-day period, after a 7-day grace period, under one of the two alternative rules discussed below.

**Option 1.** Backup withhold on any reportable payments if the payee makes a withdrawal from the account after the close of 7 business days after you receive the awaiting-TIN certificate. Treat as reportable payments all cash withdrawals in an amount up to the reportable payments made from the day after you receive the awaiting-TIN certificate to the day of withdrawal.

**Option 2.** Backup withhold on any reportable payments made to the payee's account, regardless of whether the payee makes any withdrawals, beginning no later than 7 business days after you receive the awaiting-TIN certificate.



The 60-day exemption from backup withholding does not apply to any payment other than interest, dividends, and certain payments relating to readily tradable instruments. Any other reportable payment, such as nonemployee compensation, is subject to backup

withholding immediately, even if the payee has applied for and is awaiting a TIN.

Even if the payee gives you an awaiting-TIN certificate, you must backup withhold on reportable interest and dividend payments if the payee does not certify, under penalties of perjury, that the payee is not subject to backup withholding.

If you do not collect backup withholding from affected payees as required, you may become liable for any uncollected amount.

## Payees Exempt From Backup Withholding

The following payees are exempt from backup withholding with respect to the payments below, and should enter the corresponding exempt payee code on Form W-9. If a payee is not exempt, you are required to backup withhold on reportable payments if the payee does not provide a TIN in the manner required or sign the certification, if required.

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, agencies, or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or
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; or
13. A trust exempt from tax under section 664 or described in section 4947.

The following types of payments are exempt from backup withholding as indicated for payees listed in 1 through 13, above.

**Interest and dividend payments.** All listed payees are exempt except the payee in item 7.

**Broker transactions.** All payees listed in items 1 through 4 and 6 through 11 are exempt. Also, C corporations are exempt. A person registered under the Investment Advisers Act of 1940 who regularly acts as a broker is also exempt.

**Barter exchange transactions and patronage dividends.** Only payees listed in items 1 through 4 are exempt.

**Payments reportable under sections 6041 and 6041A.** Payees listed in items 1 through 5 are generally exempt.

However, the following payments made to a corporation and reportable on Form 1099-MISC, Miscellaneous Income, are not exempt from backup withholding.

- Medical and health care payments.
- Attorneys' fees (also gross proceeds paid to an attorney, reportable under section 6045(f)).
- Payments for services paid by a federal executive agency. (See Rev. Rul. 2003-66, which is on page 1115 of Internal Revenue Bulletin 2003-26 at [www.irs.gov/pub/irs-irbs/irb03-26.pdf](http://www.irs.gov/pub/irs-irbs/irb03-26.pdf).)

**Payments made in settlement of payment card or third party network transactions.** Only payees listed in items 1 through 4 are exempt.

## Payments Exempt From Backup Withholding

Payments that are not subject to information reporting also are not subject to backup withholding. For details, see sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, 6050N, and 6050W and their regulations. The following payments are generally exempt from backup withholding.

### Dividends and patronage dividends

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.
- Section 404(k) distributions made by an ESOP.

### Interest payments

- Payments of interest on obligations issued by individuals. However, if you pay \$600 or more of interest in the course of your trade or business to a payee, you must report the payment. Backup withholding applies to the reportable payment if the payee has not provided a TIN or has provided an incorrect TIN.
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage or student loan interest paid to you.

### Other types of payment

- Wages.
- Distributions from a pension, annuity, profit-sharing or stock bonus plan, any IRA, an owner-employee plan, or other deferred compensation plan.
- Distributions from a medical or health savings account and long-term care benefits.
- Certain surrenders of life insurance contracts.
- Distribution from qualified tuition programs or Coverdell ESAs.
- Gambling winnings if regular gambling winnings withholding is required under section 3402(q). However, if regular gambling winnings withholding is not required under section 3402(q), backup withholding applies if the payee fails to furnish a TIN.
- Real estate transactions reportable under section 6045(e).
- Cancelled debts reportable under section 6050P.



- Fish purchases for cash reportable under section 6050R.

## Payees and Account Holders Exempt From FATCA Reporting

Reporting under chapter 4 (FATCA) with respect to U.S. persons generally applies only to foreign financial institutions (FFI) (including a branch of a U.S. financial institution that is treated as an FFI under an applicable intergovernmental agreement (IGA)). Thus, for example, a U.S. financial institution maintaining an account in the United States does not need to collect an exemption code for FATCA reporting. If you are providing a Form W-9, you may pre-populate the FATCA exemption code with "Not Applicable," "N/A," or a similar indication that an exemption from FATCA reporting does not apply. Any payee that provides such a form, however, cannot be treated as exempt from FATCA reporting. For details on the FATCA reporting requirements, including specific information regarding which financial institutions are required to report, see sections 1471 to 1474 and related regulations. See Regulations section 1.1471-3(d) (2) for when an FFI may rely on documentary evidence to treat a U.S. person as other than a specified U.S. person and see Regulations section 1.1471-3(f)(3) for when an FFI may presume a U.S. person as other than a specified U.S. person.

If you receive a Form W-9 with a FATCA exemption code and you know or have reason to know the person is a specified U.S. person, you may not rely on the Form W-9 to treat the person as exempt from FATCA reporting. However, you may still rely on an otherwise completed Form W-9 to treat a person as a specified U.S. person. An exemption from FATCA reporting (or lack thereof) does not affect backup withholding as described earlier in these instructions. The following are not specified U.S. persons and are thus exempt from FATCA reporting:

- 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, agencies, or instrumentalities;
- D. A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. 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 Reg. 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; or

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

## Joint Foreign Payees

If the first payee listed on an account gives you a Form W-8 or a similar statement signed under penalties of perjury, backup withholding applies unless:

1. Every joint payee provides the statement regarding foreign status, or
2. Any one of the joint payees who has not established foreign status gives you a TIN.

If any one of the joint payees who has not established foreign status gives you a TIN, use that number for purposes of backup withholding and information reporting.

For more information on foreign payees, see the Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

## Names and TINs To Use for Information Reporting

Show the full name and address as provided on Form W-9 on the information return filed with the IRS and on the copy furnished to the payee. If you made payments to more than one payee or the account is in more than one name, enter on the first name line of the information return only the name of the payee whose TIN is shown on Form W-9. You may show the names of any other individual payees in the area below the first name line on the information return. Forms W-9 showing an ITIN must have the name exactly as shown on line 1a of the Form W-7 application.



*For more information on the names and TINs to use for information reporting, see section J of the General Instructions for Certain Information Returns.*

## Notices From the IRS

The IRS will send you a notice if the payee's name and TIN on the information return you filed do not match the IRS's records. (See *Taxpayer Identification Number (TIN) Matching*.) You may have to send a "B" notice to the payee to solicit another TIN. Pub. 1281, Backup Withholding for Missing and Incorrect Name/TIN(s), contains copies of the two types of "B" notices.

## Taxpayer Identification Number (TIN) Matching

TIN Matching allows a payer or authorized agent who is required to file Forms 1099-B, DIV, INT, K, MISC, OID, and/or PATR to match TIN and name combinations with IRS records before submitting the forms to the IRS. TIN Matching is one of the e-services products that is offered and is accessible through the IRS website. Go to IRS.gov and enter e-services in the search box. It is anticipated that payers who validate the TIN and name combinations before filing information returns will receive fewer backup withholding (CP2100) notices and penalty notices.

## Additional Information

For more information on backup withholding, see Pub. 1281.

# Request for Taxpayer Identification Number and Certification

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

<b>Print or type See Specific Instructions on page 2.</b>	<b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	<b>2</b> Business name/disregarded entity name, if different from above	
	<b>3</b> Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <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 <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	<b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	<b>5</b> Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	<b>6</b> City, state, and ZIP code	
	<b>7</b> 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 Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

<b>Social security number</b>									
				-					
<b>or</b>									
<b>Employer identification number</b>									

## 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 on page 3.

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.  
**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

### 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?** on page 2.*

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?** on page 2 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 Publication 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 28% 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 Part II instructions on page 3 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* on page 3 and the separate instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## 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* on page 3 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, list first, and then circle, the name of the person or entity whose number you entered in Part I of 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 in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in 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 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> 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.

**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. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), 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 the chart on page 4 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](http://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](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

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 items 1, 4, or 5 below indicate 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), 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)	The actual owner of the account or, if combined funds, the first individual on the account
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. 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:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. 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
14. 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

<sup>1</sup> 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.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> 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.

<sup>4</sup> 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* on page 2.

\*Note. 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 Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system 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](mailto: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](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) 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.



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

### **CONTRACT FORMS FOR CONSTRUCTION**

#### **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](http://www.dasny.org)

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**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

# **REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION (W-9) & INSTRUCTIONS**

### **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

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**AFFIRMATIVE ACTION FORMS  
FOR  
JOC CONSTRUCTION CONTRACTORS**

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Utilization Plan Cover Sheet

Standard Equal Employment Opportunity Policy Statement

Permanent Employee Distribution

Scope Verification Form

Monthly Workforce Utilization Report

Compliance Report with Instructions

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# UTILIZATION PLAN COVER SHEET

## A. MWBE COMPLIANCE STATEMENT

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

Prime Contractor, Consultant, Vendor Name

- \_\_\_\_\_ 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 OFFICE

\_\_\_\_\_  
DATE

Subscribed and sworn to before me in the State of \_\_\_\_\_  
County \_\_\_\_\_ of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

ID No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## B. DASNY REVIEW AND APPROVAL

**DASNY Opportunity Programs Group**

**DASNY Project Manager**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME







# PERMANENT EMPLOYEE DISTRIBUTION

## PROJECT INFORMATION

Project No: \_\_\_\_\_ Facility: \_\_\_\_\_  
 Project Name: \_\_\_\_\_ Bid No: \_\_\_\_\_

## PRIME INFORMATION Contractor Consultant Vendor

Firm Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 City: \_\_\_\_\_ Email: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

## DISTRIBUTION OF PERMANENT EMPLOYEES

Position or Job Title	FEMALE EMPLOYEES					MALE EMPLOYEES				
	White	Black	Native American	Hispanic	Asian	White	Black	Native American	Hispanic	Asian
<b>EXECUTIVE AND OWNER:</b> (Principal or Officer 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:**

_____										
_____										
_____										

\_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Principal or Officer (print name and title)





# COMPLIANCE REPORT

**PRIME CONTRACTOR / CONSULTANT / VENDOR INFORMATION**

Requisition Date: \_\_\_\_\_ Requisition Amount: \_\_\_\_\_

Firm Name:	Federal ID No:	Project No:	Proj Name:
Address:	Contact:	Contract No:	WAJO No (if applicable):
	Phone:	Institution:	
	Email:	Work Description:	

**MBE/WBE/SDVOB - PAYMENTS**

Instructions: In the appropriate section, please list each NYS Certified MBE/WBE/SDVOB subcontractor or supplier being utilized. All subcontractors and suppliers utilized must be listed regardless of the award amount or the payment being made. Compliance Report Instructions click [HERE](#)

**MBE PAYMENT INFORMATION**
 Check if no MBE subcontractors or suppliers are being utilized in this section

MBE Company Information	Federal ID Number	Classification	Amount to be Paid from this Requisition	Total Amount Paid from Prior Requisitions	Subcontract/PO's Award Amount
Firm Name: Address:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			
Work Description:					
Firm Name: Address:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			
Work Description:					

**MBE SUBTOTAL:**
**WBE PAYMENT INFORMATION**
 Check if no WBE subcontractors or suppliers are being utilized in this section

WBE Company Information	Federal ID Number	Classification	Amount to be Paid from this Requisition	Total Amount Paid from Prior Requisitions	Subcontract/PO's Award Amount
Firm Name: Address:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			
Work Description:					
Firm Name: Address:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			
Work Description:					

**WBE SUBTOTAL:**

# COMPLIANCE REPORT

**SDVOB PAYMENT INFORMATION**     Check if no SDVOB subcontractors or suppliers are being utilized in this section

SDVOB Company Information	Federal ID Number	Classification	Amount to be Paid from this Requisition	Total Amount Paid from Prior Requisitions	Subcontract/PO's Award Amount
Firm Name: Address: Work Description:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			
Firm Name: Address: Work Description:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			

**SDVOB SUBTOTAL:**

**NON-MBE/WBE/SDVOB - PAYMENTS**

*Instructions: List each NON-MBE/WBE/SDVOB subcontractor or supplier being utilized with a total award amount of subcontracts and purchase orders greater than \$10,000. All subcontractors and suppliers identified must be listed regardless of the payment being made.*

**NON-MBE/WBE/SDVOB PAYMENT INFORMATION**     Check if no firms or suppliers are being utilized in this section

NON-MBE/WBE/SDVOB Company Information	Federal ID Number	Classification	Amount to be Paid from this Requisition	Total Amount Paid from Prior Requisitions	Subcontract/PO's Award Amount
Firm Name: Address: Work Description:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			
Firm Name: Address: Work Description:		<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Supplier			

**NON-MBE/WBE/SDVOB SUBTOTAL:**

**REPORT TOTAL:**





**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

# **DORMITORY AUTHORITY STATE OF NEW YORK VENDOR QUESTIONNAIRE**

### **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  
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**F** 716.884.9787

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DASNY VENDOR QUESTIONNAIRE

**Title of Project:** \_\_\_\_\_ **Project No:** \_\_\_\_\_9999

**A. Instructions**

1. The Contractor shall submit this form within three (3) days after low bidder notification.
2. The Design Professional shall submit this form as part of the Request for Proposal.
3. Provide information consistent with, and as stated, in the NYS Vendor Responsibility Questionnaire submitted at time of bid, or within the Request for Proposal.
4. Respond to and answer all questions. Attach additional pages if more space is needed.
5. Sign and have notarized the CERTIFICATION (on page 5).
6. Indicate, by placing an asterisk by the question, 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.

**B. General Information**

1. Firm Name \_\_\_\_\_ TIN \_\_\_\_\_
2. Firm Address \_\_\_\_\_
3. Officer's Name \_\_\_\_\_ Title \_\_\_\_\_ Phone No \_\_\_\_\_
4. Owner or Lessee and Address of all premises to be used to provide services to the Project
  - a. Name \_\_\_\_\_ Address \_\_\_\_\_
  - b. Name \_\_\_\_\_ Address \_\_\_\_\_
  - c. Name \_\_\_\_\_ Address \_\_\_\_\_
  - d. Name \_\_\_\_\_ Address \_\_\_\_\_
  - e. Name \_\_\_\_\_ Address \_\_\_\_\_

**C. Financial Information**

DORMITORY AUTHORITY – STATE OF NEW YORK

DASNY VENDOR QUESTIONNAIRE

1. When providing copies of the firm’s recent annual financial statement, include the auditor’s report and accompanying footnotes, if any.
2. Identify below any other person or entity guaranteeing the performance of, or otherwise providing financial assistance to the firm and describe the form of assistance and list the name and federal tax identification number (TIN) of each person or entity

FORM OF ASSISTANCE	INDIVIDUAL	COMPANY NAME	TIN	ADDRESS

**D. Ownership, Management and Affiliation Information:**

*The following terms shall apply to all questions in Section D:*

*“Affiliate” shall mean any person or entity which is directly or indirectly controlled by the person or entity to which the question relates, or any person or entity which directly or indirectly controls such person or entity. For purposes of this definition, control means the power to direct the management of the firm, person or other entity, whether through ownership of shares, the right to designate the Board of Directors, contract or otherwise.*

*“Predecessor Company or Entity” shall mean any entity in which any person or entity, identified in the NYS Vendor Responsibility Questionnaire, has an ownership or other interest.*

*“Principal” shall mean any person who is or has been, within the past five years, either an owner of five percent (5%) or more of the firm’s shares, one of the firm’s five largest shareholders or a director, officer, partner or proprietor of the firm.*

1. Within the past five years has the firm, any affiliate of the firm, any predecessor company or entity, or any principal of the firm, been the subject of any of the following, (describe in detail the circumstances of each affirmative answer):
  - a. A suspension or debarment by a local government entity?  NO  YES
  - b. A rejection of a low bid on a local or federal government contract for failure to meet statutory affirmative action or minority/women business enterprise requirements?  NO  YES
  - c. Any dissolution by government proclamation?  NO  YES
  - d. A denial of application for a professional or trade license?  NO  YES

DORMITORY AUTHORITY – STATE OF NEW YORK

DASNY VENDOR QUESTIONNAIRE

Identify in questions 2, 3 and 4 below, each individual who participates in policy making, financial decisions, or the firm’s operations in relation to the Project.

2. List any firm in which the individual owns or has owned 5.0% or more within the past five years.

INDIVIDUAL	FIRM NAME	FIRM ADDRESS	TIN	% OWNED

3. Identify any affiliate of the individual or firm identified in question 2.

INDIVIDUAL	AFFILIATE	AFFILIATE ADDRESS	TIN

4. For any individual, firm or affiliate identified above, (a) list and describe all judgments, liens or claims over \$25,000 filed against the individual, firm or affiliate and state remaining undischarged or unsatisfied amounts for more than 90 days; and (b) describe and state all liquidated damages amounts assessed. Also list any litigation currently pending against the individual, firm or affiliate if the judgment sought relates to the type of work to be performed for the Project, or could have a material adverse financial impact on the individual, firm or affiliate.

INDIVIDUAL, FIRM OR AFFILIATE	LIEN OR CLAIM AMOUNT	LIQUIDATED DAMAGES AMOUNT

5. Within the past five years has any individual, firm or affiliate identified above been the subject of any of the following (describe in detail the circumstances of each affirmative answer):

- a. A judgment of conviction for any business-related conduct constituting a crime under state or federal law?  NO  YES
- b. A criminal investigation or indictment for any business-related conduct constituting a crime under state or federal law?  NO  YES
- c. A grant of immunity for any business-related conduct constituting a crime under state or federal law?  NO  YES
- d. A federal, state or local suspension or debarment?  NO  YES

DORMITORY AUTHORITY – STATE OF NEW YORK

DASNY VENDOR QUESTIONNAIRE

- e. A rejection of any bid for lack of qualifications, responsibility or submission of an informal, non-responsive or incomplete bid?  NO  YES
- f. A rejection of any subcontract for lack of qualifications, responsibility or submission of any informal, non-responsive or incomplete bid?  NO  YES
- g. A denial or revocation of pre-qualification?  NO  YES
- h. A voluntary exclusion from bidding or contracting agreement?  NO  YES
- i. Any administrative proceeding or civil action seeking specific performance or restitution in connection with any public works contract except any disputed work proceeding?  NO  YES
- j. An OSHA Citation and Notification of Penalty containing a violation classified as serious?  NO  YES
- k. An OSHA Citation and Notification of Penalty containing a violation classified as willful?  NO  YES
- l. A prevailing wage or supplement payment violation?  NO  YES
- m. A state Labor Law violation deemed willful?  NO  YES
- n. Any other federal, state or local citations, Notices, violation orders, pending administrative hearings or proceedings, or determinations of a violation of any labor law or regulation?  NO  YES
- o. Any criminal investigation, felony indictment or conviction concerning information of, or any business association with, any allegedly false or fraudulent women's, minority or disadvantaged business enterprise?  NO  YES
- p. Any denial, decertification, revocation or forfeiture of women's business enterprise, minority business enterprise or disadvantaged business enterprise status?  NO  YES
- q. Rejection of a low bid on a local, state or federal contract for failure to meet statutory affirmative action or minority/women business enterprise requirements?  NO  YES
- r. A consent order with the NYS Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of the federal or state environmental laws?  NO...  YES
- s. Any bankruptcy proceeding?  NO  YES
- t. Any suspension or revocation of any business or professional license or dissolution by governmental proclamation?  NO  YES
- u. Any citations, Notices, violation orders, pending administrative hearings or proceedings or determinations for violations of:
- i. Federal, state or local health laws, rules or regulations?  NO  YES
  - ii. Unemployment insurance or workers compensation coverage or claim requirements?  NO  YES
  - iii. ERISA (Employee Retirement Income Security Act)?  NO  YES
  - iv. Federal, state or local human rights laws?  NO  YES
  - v. Federal or state security laws?  NO  YES
  - vi. Tax laws?  NO  YES
- v. Denial of application for a professional or trade license?  NO  YES
- w. A determination of non-responsibility under State Finance Law § 139-j and § 139-k?  NO  YES
- x. A monitorship, or any type of oversight or review, by an Independent Private Sector Inspector General ("IPSIG") or similar entity, whether appointed by a court, by an administrative body, or pursuant to an agreement with a public agency or authority?  NO  YES

DORMITORY AUTHORITY – STATE OF NEW YORK

DASNY VENDOR QUESTIONNAIRE

6. Within the past five years, has the firm, affiliate, predecessor company or entity, principal, or manager or individual who participates in policy making, financial decisions, or the firm’s operations in relation to the Project (describe in detail the circumstances of each affirmative answer):
- a. Filed or submitted to any government agency, employee or representative any document that the person knew to contain a false statement or false information?  NO  YES
  - b. Falsified any business record?  NO  YES
  - c. Given or offered to give money or any thing of value or any benefit to any labor official or public servant with intent to influence that person’s official acts, duties or decisions as a labor official or public servant?  NO  YES
  - d. Given or offered to give money or any thing of value or any benefit to any official or employee of a business with intent to induce that person or employee to engage in unethical or illegal business practices?  NO  YES
  - e. Agreed with any person to submit a proposal, price or bid below prevailing market rate?  NO  YES
  - f. Been sued or paid a settlement of claim related to the performance of professional services?  NO  YES

**E. Certification**

The undersigned recognizes that the DASNY Vendor Questionnaire is submitted for the express purpose of inducing the Dormitory Authority - State of New York to award a contract or approve a subcontract; acknowledges that the Dormitory Authority may in its discretion, by means which it may choose, determine the truth and accuracy of all statements made herein; 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 the information provided herein and any attached pages is true, accurate and complete.

Officer’s Signature: \_\_\_\_\_

Officer’s Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public: \_\_\_\_\_



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

**JOB ORDER CONTRACTING PROGRAM**

**DORMITORY AUTHORITY**  
**STATE OF NEW YORK**

**GENERAL INSURANCE REQUIREMENTS**

**SAMPLE INSURANCE CERTIFICATE**  
**&**  
**LIST OF ADDITIONAL INSUREDS**

**CORPORATE  
HEADQUARTERS**

515 Broadway  
Albany, New York  
12207-2964

**T** 518.257.3000  
**F** 518.257.3100

**NEW YORK OFFICE**

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New York, New York  
10119-0098

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**F** 212.273.5121

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**DASNY**

**ALFONSO L. CARNEY, JR.**  
Chair

**GERRARD P. BUSHELL**  
President

**Contract Requirements for Additionally Insured**

**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.

Questions concerning Additional Insured Requirements should be directed to Erin Butler, Sr. Manager, Construction Contracts at (518) 257-3353.



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

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

**Region No. – (Trade)**

**CORPORATE  
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515 Broadway  
Albany, New York  
12207-2964

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## Agreement

Job Order Contract No. -----  
Region -- (Trade)

This Agreement made as of the --<sup>th</sup> day of --- 2016, 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. -- (Trade) 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:  

**0.0000**  
(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:  

**0.0000**  
(Specify to four decimal places)
  - c. Non Pre-Priced Work: Contractor shall perform tasks during day shift Saturday or Sunday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:  

**0.0000**  
(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 \_\_\_\_\_, 2016.

Dormitory Authority  
515 Broadway  
Albany, NY 12207-2964

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 \_\_\_\_\_, 2016.

-----  
-----  
-----

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 2016, before me personally came JOHN P. KEMP to me known, who, being by me duly sworn, did depose and say that he resides at Albany, New York, that he is the Chief, Construction Contracts 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 2016, 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 2016, 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. – (Trade) 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

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**F** 518.257.3100

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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 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



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.

**Performance Bond**

---

- 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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**NEW YORK**  
STATE OF  
OPPORTUNITY™

**DASNY**

## **JOB ORDER CONTRACTING PROGRAM**

### **General Conditions for Job Order Contracting (JOC)**

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Albany, New York  
12207-2964

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**F** 518.257.3100

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[www.dasny.org](http://www.dasny.org)

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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.

***As-built*** – A set of drawings, specifications and schedule prepared by the Contractor, which include any revisions in the drawings, specifications and schedule during construction, indicating how the Work was actually constructed.

***Beneficial Occupancy*** – The stage in the performance of the Work when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents and prior to Substantial Completion, so the Owner 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 in accordance with Article 7- Changes in the Work.

***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.

***Contract Closeout*** – Final completion and acceptance of the performance of the Work evidenced by the final payment to the Contractor by the Owner.

***Construction Manager*** - A person, persons, firm, partnership or corporation regularly engaged in management of construction projects and so designated by the Owner.

***Consultant*** - A person, persons, firm, partnership or corporation providing Architectural, Engineering, 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, Insurance, General Conditions, General Requirements, Drawings, Specifications, Addenda, Change Orders, and all provisions of law deemed to be included in the Contract.

***Contract Manager*** – A software program used by the Owner in managing the Work.

***Contractor*** - A person, persons, firm, partnership or corporation with whom the Contract is entered into by the Owner to perform the Work.

***Design Professional*** - A person, persons, firm, partnership or corporation providing Architectural, Engineering, or other professional services, and so designated by the Owner.

**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.

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

**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 (i) acts in deliberate ignorance of the truth or falsity of the Information or (ii) acts in reckless disregard of the truth or falsity of the Information.

**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 Article 7 – Changes in the Work.

**Furnish** - To deliver to the Site ready for installation.

**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 bid and transmits the Agreement, bonds and other documents to the Contractor for signatures.

**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 Substantial Completion** - Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, accepting the Work of the Contract Documents as Substantial Completion and constitutes start of the guarantee period.

**Notice to Proceed** - Written notice, signed by the Owner, to the Contractor, that acknowledges receipt by the Owner of the signed Agreement and bonds from the Contractor and directs the Contractor to start performance of the Work; or

Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, directing the Contractor to proceed in accordance with Article 7 – Changes in the Work or Article 10 – Claims and Disputes.

**Owner** - Dormitory Authority of the State of New York.

**Owner's Representative** - A person, persons, firm, partnership or corporation so designated by the Owner to act on behalf of the Owner.

**P6 Project Management** – A software program used by the Owner to monitor performance of the Work.

**Project** - Work at the site(s) carried out pursuant to one or more sets of Contract Documents.

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

**Shop Drawings** - Diagrams, fabrication drawings, illustrations, schedules, test product data, performance charts, catalog cuts and product data that are submitted by the Contractor and illustrate any portion of the Work.

**Site** - The area 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; if not followed by an order to resume work, it amounts to termination of the Contract.

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

**Subcontractor** - A person, persons, firm, partnership or corporation under contract with the Contractor, or under contract with any Subcontractor, to provide labor and material 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 can occupy or utilize the Work for its intended use, evidenced by the Notice of Substantial Completion executed by the Owner.

**Work** - All obligations imposed upon the Contractor by the Contract Documents.

## **ARTICLE 1A – CONTRACT OVERVIEW AND PROCEDURES FOR ORDERING WORK**

### **Section 1A.01 - Work to be Performed**

- A. The Contractor shall perform the Work described in the Detailed Scope of Work referenced in each Job Order. The Contractor will be required to perform Work at various locations within the geographic limits defined in the Contract.
- B. The price of each Job Order shall be:
  1. The sum of the following calculation for each Prepriced Task: the Unit Price multiplied by the quantity, multiplied by the appropriate Adjustment Factor; plus
  2. The total of all Non-Prepriced Tasks.
- C. The Contractor shall make the necessary arrangements for and obtain all filings, permits and controlled inspections required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefore. If the Contractor is required to pay an application fee for filing a Project, a fee to obtain a building permit, or any other permit fee to the City of New York or other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be paid without mark-up.
- D. 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.

- E. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings required for filing.

**Section 1A.02 - Minimum and Maximum Contract Values**

- A. The Minimum Contract Value for all contracts is \$0, as indicated in the Information for Bidders. For Contracts less than \$1,000,000 the Contractor is expected receive Job Orders issued totaling at least \$25,000 during contract period. 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.
- 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. 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.
- C. The Maximum Contract Value may be revised by mutual agreement between the Owner and the Contractor.

**Section 1A.03 - Contract Term**

- A. 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 year 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.
- B. The Contract Term may be revised by mutual agreement between the Owner and the Contractor.

**Section 1A.04 - Adjustment Factors**

- A. There are three Adjustment Factors for this Contract. When preparing a Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.
- B. The Adjustment Factors will be applied as follows:
  - 1. Normal Working Hours: Monday to Friday 7:00 am to 5:00 pm except holidays.
  - 2. Other Than Normal Working Hours: Monday to Friday 5:00 pm to 7:00 am and all day Saturday, Sunday and holidays.
  - 3. Non-Prepriced Tasks.
- C. Adjustment of the Adjustment Factors/Economic Price Adjustment: The Contractor's Normal Working Hours and Other Than Normal Working Hours Adjustment Factors (*The Non-Prepriced Tasks Adjustment Factor will NOT be adjusted*) shall be adjusted on each annual anniversary date of the contract to account for the construction cost escalation or de-escalation according to the following:



1. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for New York City – Regions 1 & 2 and the 20 City Average - Regions 3, 4, 5 & 6 published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the contract date.
2. The Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for New York City - Region 1 and the 20 City Average - Regions 2-6 published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the annual contract anniversary
3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
5. Averages shall be obtained by summing the 12 month indices and dividing by 12.
6. All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding: See Rounding Rules in Section 1.01 - Definitions
7. ENR occasionally revised indices. ENR CCI's used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
8. If the Owner fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Under all circumstances, should the Contractor submit a Price Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the price submitted in the Price Proposal.
  - A. Contractor request to Move into a New Option Period: The Contractor is required to submit a notarized letter to DASNY 60 days before the anniversary date of the contract requesting the contract enter the next option period. The letter will reference The DASNY contract number, option number and express written intent by the contractor to move into the next option period.



**Section 1A.05 - Initiation of a Job Order**

- A. As the need exists for performance by the Contractor under the terms of this Contract, the Owner will notify the Contractor of a Project 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
  - 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. requirements for design services including sketches, drawings, and specifications
  - 8. construction duration
  - 9. liquidated damages
  - 10. specific quality requirements for equipment and material
  - 11. the presence of hazardous materials
  - 12. date on which Proposal is due.
  
- B. Upon completion of the joint scoping process, a draft Detailed Scope of Work will be prepared together with any sketches, drawings and specifications required to adequately document the work to be accomplished. This material may be prepared by the Owner, Consultant, or by the Contactor, if requested by the Owner. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Request for Proposal which will require the Contractor to prepare a Proposal for the Work under consideration. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis upon which the Contractor will develop its Proposal and upon which the Owner will evaluate the Proposal. The contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

**Section 1A.06 - Preparation of the Proposal**

- A. The Contractor will prepare Proposals in accordance with the following:
  - 1. Prepriced Tasks: For Prepriced Tasks the Contractor shall identify the task and quantities required from the Construction Task Catalog®.
  - 2. Non-Prepriced Tasks: Non-Prepriced Tasks shall be separately identified and submitted in the Proposal. Information submitted in support of Non-Prepriced Tasks shall include, but not be limited to, the following:
    - a. Complete specifications and technical data, including task content, support drawings, task cost data, quality control and inspection requirements.
    - b. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material and equipment to be installed. If the work is to be subcontracted, the Contractor must submit three independent bids from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the

Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.

- c. The final price submitted for Non-Prepriced Tasks shall be according to the following formula:

Labor and Equipment will be from the Construction Task Catalog® and the Contractor's current Adjustment Factors will apply.

A = If the Labor Trade is **NOT** listed in the Construction Task Catalog®, then, Direct Labor Cost and Fringe Benefits per Prevailing Wage Rates

B = Direct Material Costs (supported by three quotes)

C = If the Equipment is **NOT** listed in the Construction Task Catalog®, then, Direct Equipment Costs (supported by equipment amortization data)

D = Subcontractor Costs (supported by three quotes)

Total Cost of Non Pre-Priced Task = (A + B + C + D) X  
 (Contractor's NPP Adjustment Factor)

- d. The total extended price for the Non-Prepriced Task will be determined by multiplying the price for a single unit of the item by the quantity required. The price offered in the Proposal will be determined by multiplying the total extended price by the Contractor's Adjustment Factor for Non PrePriced Tasks.
- e. After a Non-Prepriced Task is used on three separate Job Orders, the price for such task will be established, following approval by the Owner, and fixed as a permanent Prepriced Task which will be utilized without mark-up and will no longer require price justification.
- f. The Owner's determination as to whether an item is a Prepriced Task or a Non-Prepriced Task shall be final, binding and conclusive as to the Contractor.

- 3. The Owner's determination as to the appropriateness of a task or whether an item is a Prepriced Task or Non-Prepriced Task shall be final, binding and conclusive as to the Contractor.

- 4 The Contractor's Proposal shall include, at a minimum:

- a. Price Proposal;
- b. Required architectural or engineering drawings or sketches;
- c. Catalog cuts, technical data or samples;
- d. List of anticipated Subcontractors and Material men indicating MBW/WBE status and anticipated price;
- e. Construction schedule (with notification schedule for Hazardous Materials Remediation);
- f. Sample warranties or guarantees for materials, equipment or systems proposed.

5. The Contractor's Proposal shall be submitted by the date indicated on the RFP. All incomplete Proposals shall be rejected. The time allowed for preparation of the Contractor's Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring engineering/architectural drawings and approvals, allowance will be made to provide adequate time for preparation and submittal of the necessary documents and the Proposal and so reflected in the Proposal due date entered on the RFP. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Proposal may be required quickly and the due date will be so indicated on the RFP or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow. The Owner reserves the right to terminate the contract under Section 11.01 - *Termination for Cause* herein should the Contractor regularly fail to deliver proposals within the time allowed.
6. Minimum Set-Up Charges: 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. The Owner reserves the right to require the Contractor to provide three (3) independent proposals as justification of any work subcontracted. The final Job Order price shall be determined by multiplying the lowest acceptable proposal by the Contractor's Non Pre-Priced (NPP) Adjustment factor.

**Section 1A.07 - Review of the Proposal and Issuance of Job Order**

- A. The Owner will evaluate the entire Proposal and proposed tasks and compare these with the Owner's cost estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the nature and quantity of 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 it is determined to be in the best interests of the Owner not to do so or if the Price Proposal exceeds the Owner's estimate. The Contractor shall have no claim to recoup the cost of preparing a Proposal. The Owner may pursue the performance of such Work by other means. The Owner reserves the right to terminate the contract under Section 11.01 - *Termination for Cause* herein should the Contractor submit Price Proposals that chronically and substantially exceed the Owner's estimates, and/or submit Proposals containing chronically and substantially unrealistic construction schedules.
- C. By submitting a signed Proposal to the Owner, the Contractor agrees to accomplish the Work set forth in the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted and within the time agreed upon. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal prior to delivering it to the Owner.
- D. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the price to be paid and the Job Order Completion Time. All clauses of this Contract shall be applicable 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 will be provided to the Contractor.

- E. In the event that immediate emergency response is necessary the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated in accordance with the Construction Task Catalog® and Non-Prepriced Tasks as if the Work had been ordered under the standard procedures.
- F. For Life/Safety issues where 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®.

## **ARTICLE 2 -- CONTRACT DOCUMENTS**

### **Section 2.01 - Captions**

The tables 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, files produced by Contract Manager, email, word processing, spread sheet, data base, payments, other software programs and all Contract Documents.
- 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) 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 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 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 made against the Contractor or Owner by any person or entity, 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 meaning and intent of the Contract Documents shall be as interpreted by the Owner. Any change to the Contract Documents must be provided in writing, by the Owner, in accordance with Article 7 – Changes in the Work.
- 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 that may arise in relation to said Work. The Owner's estimates and decisions shall be final except as otherwise expressly provided.
- C. The Owner may, at its sole discretion, waive certain provisions of the Contract Documents. Such waiver shall only be done in writing and the waiver of one provision shall not act as a waiver of any other provision of the Contract Documents, which shall remain in full force and effect.
- D. Any differences or conflicts concerning performance that may arise between the Contractor and other Contractors performing Work for the Owner shall be adjusted and determined by the Owner.
- E. The Owner may act through an Owner's Representative designated by the Owner.

### **Section 2.04 - Notice and Service Thereof**

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 authorized representative, at the last address given by the Contractor.

### **Section 2.05 - Nomenclature**

Materials, equipment or other Work 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 person, firm or corporation 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 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 Documents shall be valid and be enforced to the fullest extent permitted by law.

### **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 shall govern, unless the Owner directs otherwise.
- 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.

### **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 notice to the Owner of such conditions and shall not disturb said conditions until authorized to do so by the Owner.
- D. Subsurface or site conditions found materially differing from these 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 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 be in 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.
- D. Special locations for equipment, pipelines, ductwork and other such items of the Work, where not dimensioned on plans, shall be coordinated with other affected 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, manpower, equipment, subcontractors, and suppliers available to complete the Work within the time specified for the Contract amount.
- B. That it is familiar with all federal, state, and local laws, ordinances, orders, rules and regulations which may affect the Work.
- C. That any 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 it will comply with all applicable local, state, and federal rules and regulations and all applicable construction standards of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and other accrediting agencies and organizations.

### **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 five (5) days of discovery.

### **Section 4.03 - Coordinated Composite Drawings**

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 or subcontractors, 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.

**Section 4.04 - Meetings**

The Contractor shall attend all meetings as directed by the Owner.

**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 must be able to read, write and speak English fluently, as well as communicate with the workers.
- B. If at any time the supervisory staff is not satisfactory to the Owner, the Contractor shall, if directed by the Owner, immediately replace such supervisory staff with other staff satisfactory to the Owner at no additional cost to the Owner.
- C. The Contractor shall remove from the Work any employee of the Contractor or of any Subcontractor when so directed 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 to the Owner for review and acceptance prior to proceeding with scheduling of the Work.
- B. Using the software required by the Owner, the Contractor shall prepare, maintain, and revise the CPM schedule to monitor the progress of all project operations, in accordance with the Contract Documents.
- C. Construction activities shall be interrelated on a single schedule that represents the entire Contract duration from Notice to Proceed to Substantial Completion to Contract Closeout. The Contractor shall utilize the CPM schedule of network calculation to generate the CPM schedule. The Contractor shall assure all logic constraints are identified between the Work of the Contract and the Work of other Contractors and Owner’s Work prior to approval of the CPM schedule.
- D. Review comments made by the Owner on the 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. The Owner’s review comments are offered as a courtesy and are not conditions of Owner acceptance, but are for the general conformance with scheduling requirements and industry scheduling concepts.
- E. The Contractor expressly understands and agrees that no additional compensation shall be paid for any alterations to planned construction sequence to accommodate such revisions. 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 regardless of the Owner’s approval of the precedence diagram.



- F. The Owner may withhold Applications for Payment if the Contractor fails to provide an acceptable project scheduler, network analysis, schedules or revisions thereto in accordance with requirements of project scheduling.

**Section 4.07 - Worker Identification and Site Access Control**

- A. All employees of the Contractor and every Subcontractor must 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.
- B. All employees of the Contractor and every Subcontractor, prior to entering the Site for the first time, must 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 permitted by law.

- C. All employees of the Contractor and every Subcontractor must 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 must produce a valid form of government-issued photo identification promptly upon request of the Owner. Failure to display such identification or to display or 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.
- 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 that contracts with the Owner and should not assume that all of the services enumerated in said contracts will be provided.
- C. The Contractor must 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 keep informed of the progress and workmanship of other contractors and any subcontractors and shall notify the Owner in writing immediately of lack of progress or defective workmanship on the part of other contractors or subcontractors, 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 notice of lack of progress or defective workmanship by others 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 subcontractors, or where there is evidence that Work of the Contractor may interfere with work of other contractors or subcontractors, 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 subcontractors, the Contractor shall make changes necessary to correct the condition at no additional cost to the Owner.

**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
  - 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.
- C. If the Contractor notifies the Owner, in writing, that another contractor on the Site is failing to coordinate the work of said contractor 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 another 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 said Claims. 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 delays attendant upon any 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 workmanlike manner, within the time specified in the Contract and to the satisfaction of the Owner.
- B. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 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 in default and for the Owner to take action against the Contractor as set forth in Article 11 - Termination or Suspension, or such other action as the Owner may deem proper.

**Section 5.02 - Means and Methods of Construction**

- A. Unless otherwise provided in the Contract Documents, the Means and Methods of Construction shall be such as the Contractor may choose subject to the Owner's right to reject 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.
- B. The Owner's approval of the Contractor's Means and Methods of Construction, or its failure to exercise its right to reject such means and methods, shall not relieve the Contractor of its obligation to complete the Work, nor shall the exercise of such right to reject create a cause of action for damages.

**Section 5.03 - Contractor's Title to Materials**

- A. No materials or supplies 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 and supplies 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. All materials, equipment and articles that 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 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 equal between the Owner (50%) and Contractor (50%).
- C. Where the Design Professional, pursuant to the provisions of this Section, approves 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 the cost of the Contractor and shall be subject to the approval of the Design Professional.
- D. No substitution will be permitted which may result in a delay to the Project.

**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.
- 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. 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 into 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 into 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 Section 7.0 – Approval of Subcontractors/Subcontract Limits stated in the Information for Bidders. 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 additional cost to the Owner. If requested by the Owner, the Contractor shall provide copies of any and all Subcontract 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.
- E. Nothing contained in the Contract or any subcontract shall create any contractual relationship between Subcontractors and the Owner.
- F. In selecting a Subcontractor, the Contractor shall consider whether the Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration. The Contractor shall not Subcontract with any Subcontractor 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 Subcontractor on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law.

- G. 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 and a Dormitory Authority DASNY Vendor Questionnaire.
- H. The Contractor shall submit a NYS Vendor Responsibility Questionnaire 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 Article 19 – Executive Order No. 125.
- I. 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**

- A. Without invalidating the Contract, the Owner, in writing, may order changes in the Work by altering, adding or deducting from the Work of the Contract. For all approved changes in the Work, the Owner shall issue to the Contractor, a Notice to Proceed followed by an executed Change Order form, processed through Contract Manager, which both forms shall include a change request number. No alteration to these forms shall be accepted and no payment shall be due the Contractor until said forms are issued and executed by the Owner. If the Substantial Completion date is affected by a change, an increase or decrease to the duration, in days shall be included on the Change Order form.
  - 1. The Owner may process a Forced Change Order 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 pursuant to Article 10 - Claims and Disputes.
- B. The Contract sum may be increased or decreased 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 Article. Unit prices are limited to the quantities specified in the Contract Documents or Change Order. Quantities greater than specified in the Contract Documents or Change Order are subject to negotiations by the Owner.
  - 2. By estimating the fair and reasonable cost of the changes in the Work or deleted Work.
  - 3. By determining the actual cost of the changes in the Work and considering the following:
    - a. Labor, including all wages, required wage supplements and insurance required by law, paid to employees below the rank of superintendent directly employed at the Site. 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. Premiums for liability insurance associated with Change Order Work.
  - d. Materials associated with Change Order Work.
  - e. 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 "Green Book", the "Blue Book", or from the Associated General Contractors of America. 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 loosely 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 changes in the Work.
  - f. 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 "Blue Book" would be added to this rate to establish the billable rate.
- C. For each proposed changes in the Work, the Contractor shall submit to the Owner, within the time frame provided by the Owner, the following information:
1. A detailed proposal of labor, material and equipment costs for the proposed changes in the Work. The Contractor and Subcontractors shall use the Owner's Contractor and Subcontractor 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 must provide a notarized statement as follows:  
  
*"I hereby certify that the value for the labor, material and equipment that comprise the proposals, 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."*
  3. Signed and notarized labor rate worksheet to determine hourly rates for each classification of worker associated with the proposed changes 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>. The Contractor agrees to provide additional documentation to further verify labor and material costs at the Owner's request.
  4. Narrative and fragment schedule, which describes the impact on the CPM schedule in duration days associated with the proposed changes in the Work.
- D. Each Contractor's and Subcontractor's proposals shall be reviewed by the Owner consistent with the requirements of Article 7 – Changes in the Work. Upon the Owner's approval, and with appropriate

approval authority, the Owner shall issue, to the Contractor, the Notice to Proceed and execute the Change Order form between the Contractor and the Owner.

- 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 undersigned party 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 (False and Fraudulent Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.
- F. The compensation specified in the executed Change Order includes full payment for the changes in the Work covered thereby, and the Contractor waives all rights to any other compensation for the changes in the Work, damage or expense.
- G. The Contractor shall furnish satisfactory bills, payrolls and vouchers 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. This information shall not be used as a basis to reduce compensation for Change Order work items for which the Owner has accepted the Contractor’s proposal consistent with paragraph “C” of this section, providing the work was performed in a manner consistent with the accepted proposal.
- H. At Substantial Completion, the Owner may address increased bonding costs which may have resulted from changes in the Work. The Contractor must provide satisfactory proof and paid invoice of increased costs. The Owner will not pay overhead and profit on any increased costs for bonding.

**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 Exception - Paragraph “D”.

**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.

**Example C:**

Subcontractor base cost	\$200,000
20% Subcontractor over head 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

- F. Other than the overhead and profit described in Section 7.02A, no further overhead and profit will be allowed for changes to the Work performed by a Subcontractor under contract with the Contractor or for major equipment or material supplier determined to be an affiliate of the Contractor. An affiliate is considered any firm or entity in which the Contractor or any individual listed on the NYS Vendor Responsibility Questionnaire that either owns 5% or more of the shares of, or is one of the five largest shareholder, a director, officer, partner or proprietor of said Subcontractor, major equipment or material supplier.
  - 1. The determination of an affiliate firm or entity will be made at the sole discretion of the Owner.
- G. No overhead and profit shall be made for changes in the Work performed by a Subcontractor not under direct contract 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.

**ARTICLE 8 -- PAYMENT**

**Section 8.01 - Provision for Payment**

- A. The Contractor shall complete and submit to the Owner for review, the detailed Schedule of Values (*a form in the Contract Document, which establishes the minimum level of payment detail to formulate an initial Application for Payment*) included in the Contract Documents prior to the Contractor's first Application for Payment (*a form provided by the Owner which provides certification by the Contractor for payment*). It is understood and the Contractor acknowledges that the Schedule of Values is included as an administrative tool for the purpose of illustrating a format and minimum level of detail required, 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. 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 the Contract Documents.

The Contractor, at its own expense, shall take all actions necessary to fully comply with the requirements of the New York State Minority and Women-Owned Business Enterprise (M/WBE) Monitoring and Compliance System, which is being maintained and managed by B2Gnow and administered by the New York State Department of Labor and other New York State entities, including the Owner (“B2G Compliance System”). Contractor shall require all of its Subcontractors of every tier to comply with the requirements of the B2G Compliance System. These requirements include, but are not limited to, the Contractor’s timely payment to all Subcontractors and timely input into the B2G Compliance 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.

- B. The Owner shall not approve any billing request until (i) the Contractor is in full compliance with the B2G Compliance System; and (ii) the Owner approves the Schedule of Values.
- C. The Owner may make a partial payment to the Contractor on the basis of an approved Contractor's pencil copy (*a form provided by the Owner which establishes a billing request from the Contractor and when approved by the Owner, formulates the Application for Payment*) billing request of the Work performed during each preceding business month. The Owner shall retain five percent (5%) of the amount of each said billing request.
- D. 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.
- E. In preparing the Contractor's pencil copy 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, may be taken into consideration. All costs related to the storage of materials are the sole responsibility of the Contractor.
- F. The Owner will provide an agreement for materials stored off-site and specific forms that the Contractor must complete 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, and inventory.
- G. All monthly billing requests submitted by the Contractor shall be in the form and manner approved by the Owner. The Contractor shall furnish such affidavits, vouchers and receipts as to delivery and payment for materials as required by the Owner to substantiate each and every billing request.
- H. Timely payment by the Owner to the Contractor is governed by Section 2880 of the Public Authorities Law. Timely payment (7 days) by the Contractor to the Subcontractor is governed by Section 139-f of the State Finance Law.
- I. Reimbursable Expenses:

Payment for approved reimbursables shall be made on the basis of invoices submitted by the CONTRACTOR and approved by the OWNER. Total reimbursement for said reimbursables shall not exceed the amount specified in each Job Order for reimbursable expenses. Reimbursable Expenses are in addition to the compensation for construction services and include actual expenditures supported by detail receipts/documentation made by the CONTRACTOR and his Subcontractors, as approved by the OWNER. Said reimbursement shall be limited to those specific items listed below:

- a. Permits;
- b. Special Inspections;
- c. Special Insurance; and
- d. Additional Warranties
- e. Labor Only Line Items:

Payment for Labor Only Line Items shall be invoiced on an Actual Expense (AE) basis and shall include the following items:

- a. Signed and notarized labor rate worksheet to determine hourly rates for each classification of worker associated with the Labor Only Line Item(s). 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>. Labor rate work sheet shall be provided to the Owner for review and approval with each Contractor Proposal.
- b. Original certified payroll forms for each classification of worker associated with Labor Only Line Items.

**Section 8.02 - Substantial Completion and Reduction of Retainage**

- A. After the Owner has determined Substantial Completion of the Work, as evidence by the executed Notice of Substantial Completion, the Contractor shall submit to the Owner, for Owner's approval, a detailed estimate of the value of the known remaining items of Work as set forth by the Owner and a schedule of completion for said items of Work. The Owner shall review that estimate and make the final determination.
- B. The Owner, when all the Work is at Substantial Completion, 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.
  2. An amount necessary to satisfy any and all Claims, liens or judgments against the Contractor.
- C. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to the duly completed and submitted monthly billing request.
- D. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until final Contract Closeout by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to this Section.
- E. The Contractor may request from the Owner a reduction of retainage upon Substantial Completion of the Work or when a phase of the Work is accepted by the Owner.
- F. The acceptance by the Contractor of the first payment of reduction of retainage shall be and shall operate as a release 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. This provision may be waived 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 pursuant to Section 17.02 shall not become due until the Contractor submits to the Owner a General Release and Consent of Surety to said payment and completes all Work and provides all documents as evidenced by the executed Notice of Substantial Completion as required by the Contract 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**

Upon the Owner's receipt of a lien, a sum which shall be one and one-half (1 1/2) times the amount stated to be due in the notice of lien shall be deducted from the current payment due the Contractor. This sum shall be withheld until the lien is 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:
1. To assure payment of just claims of any 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 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 assure payment of fines and penalties, that may be imposed on the Contractor pursuant to the provisions of the contract.
  5. To assure payment of fines and penalties that may be imposed on the Contractor pursuant to Article 20 - Opportunity Programs. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of M/WBE sub-contract awards and the actual dollar amount of such awards.
  6. To protect and make whole the Owner from a contractor's non-compliance to the requirements set forth in Article 15 – Insurance and Bonds.
  7. Damage 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 shall be governed by Section 2880 of the Public Authorities Law, to the extent required by law.

#### **Section 8.07 - Owner Liability**

- A. The provisions of Article 8 are solely for the benefit of the Owner, and any action or non-action here under by the Owner shall not give rise to any liability on the part of the Owner.
- B. The Contractor shall comply with the requirements of Section 10.07 – Limitations on Actions.

**ARTICLE 9 -- TIME OF COMPLETION**

**Section 9.01 - Time of Completion**

- A. The Work shall commence at the time stated in the Notice to Proceed and shall be completed no later than the date of 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, as 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 insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for Substantial Completion of the Work described 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 if the Owner determines 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 the Contractor shall, within ten (10) days from the beginning of any such delay, notify the Owner in writing of the causes of the delay.
- E. The date of Substantial Completion may be extended by a Change Order or approval of the updated critical path method schedule, by the Owner.
- F. If the Contractor shall neglect, fail or refuse to obtain Substantial Completion within 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 that the Contractor is in default. Default shall include abandonment of the Work by the Contractor.
- G. 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, 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.
- H. 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, to



the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Owner 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. The provisions of this paragraph are for the exclusive use of the Owner, and shall not accrue to other contractors or third parties.

## **ARTICLE 10 -- CLAIMS AND DISPUTES**

### **Section 10.01 - Notification of Claim**

- A. A written notice of Claim shall be delivered concurrently to the Owner's Project Manager and Cost Control Unit by the Contractor within fifteen (15) working days after occurrence of the event giving rise to such Claim or within fifteen (15) working days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. Burden of proving the Owner's receipt of Claim shall be the Contractor's responsibility.
- B. Within ninety (90) working days of the initial notice of Claim, the Contractor shall substantiate the Claim and document the nature of the Claim and provide supporting cost data, Contractor's original cost estimate, P6 Project Management schedule demonstrating alleged impact and correlation to the Claim and a Contractor affidavit stating the following:

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

1. The Contractor shall provide, every thirty (30) days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.
  2. Failure of the Contractor to comply and submit the requirements stated in Section 10.01 may result in rejection of Claim.
- C. The Contractor shall provide the Owner's Project Manager one (1) paper copy of the documented Claim and mail two (2) paper copies of the documented Claim to:

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

- D. The value of any Claim, if allowed, shall be determined by the methods described in Article 7 – Changes in the Work.
- E. Any information representing the actual value of the Work and material contained in the Claim that constitutes False Representation, may subject the undersigned party 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 (False and Fraudulent Statements) and/or Termination of the Contract for Cause and civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.

**Section 10.02 - Claim for Extra Work**

- A. If the Contractor wishes to make Claim for an increase in the Work of the Contract, or that any action or omission of the Owner is contrary to the terms and provisions of the Contract, a Claim shall be filed in accordance with the procedure herein.
- B. No payment for Extra Work shall be allowed unless directed by a Notice to Proceed executed by the Owner.
- C. The Contractor's failure to comply with any or all parts of this Article 10 shall be deemed to be:
  - 1. A conclusive and binding determination on the part of the Contractor that a Notice to Proceed, Work, action or omission does not involve Extra Work.
  - 2. A waiver by the Contractor of all claims for additional compensation or damages as a result of a Notice to Proceed, Work, action or omission.

**Section 10.03 - Damages for Delay**

Compensation by the Owner for any delay or hindrance from any cause whatsoever may be made by the Owner as provided by Section 9.01 E, by extending the date for Substantial Completion as specified in the Contract or by increasing the amount of the Contract. Denial of additional time may not entitle the Contractor to additional costs. No payment for increased cost, charge, expense or damage of any kind shall act as a waiver of the Owner's right to compensate the Contractor solely by extending the date for Substantial Completion. Failure of the Owner to respond in writing to a written request for additional time within thirty (30) days shall be deemed a denial of the request.

**Section 10.04 - Claim for Additional Cost**

If the Contractor wishes to make Claim for an increase in the Contract sum, a Claim shall be filed in accordance with the procedure herein. Denial of additional costs may not entitle the Contractor to additional time.

**Section 10.05 - Continuance of the Work**

Unless otherwise agreed in writing, the Contractor shall proceed diligently with said Claim and with the performance of the Work. The Contractor agrees that no default, act or omission of the Owner shall constitute a material breach of Contract entitling the Contractor to cancel or rescind the same or to suspend or abandon the performance of the Work.

**Section 10.06 - Resolution of Claim**

- A. Any resolution or determination by the Owner of a Claim shall be final, binding and conclusive on the Contractor. Within ten (10) working days after receiving notice of the Owner's resolution, the Contractor may file a written statement 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.
- B. At its discretion, the Owner may resolve any Claim without waiving its rights under the Contract.



**Section 10.07 - Limitation on Actions**

- A. 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 six (6) months after the earliest following event:
  - 1. The date the Notice of Substantial Completion is executed by the Owner.
  - 2. Receipt, by the Owner, of the Contractor's final Application for Payment, if no Notice of Substantial Completion is issued.
  - 3. The date of termination if the Contract is terminated by the Owner.
- B. Filing an action or initiating a proceeding prior to Substantial Completion may be grounds for Termination for Convenience.
- C. 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.
- D. In the event that a judgment is obtained against the Owner, the Contractor agrees to accept no more than three percent (3%) interest, per annum on the judgment amount.

**Section 10.08 - Waiver of Certain Causes of Action**

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.

**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 terminate the Contract. Such notice shall contain the reasons for the intention to terminate the Contract upon a date specified by the Owner. The Contractor will be allowed an opportunity to show why its Contract should not be terminated for cause. If the violation or delay shall not cease or arrangements satisfactory to the Owner are not made, the Contract shall terminate upon the date so specified by the Owner.
- 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 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 notice of termination specifying the extent to which 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 date of the last approved Application for Payment up to the effective date of the termination, including retainage, pursuant to 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.
- 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 or 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, 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 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.

**Section 11.05 - Stop Work**

- A. Should the Contractor fail to comply with the terms of the Contract, the Owner, at any time, by written order to the Contractor, can 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 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 at time of Beneficial Occupancy 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.
- C. Should the Contractor request Owner acceptance of any project system related to the protection of life or property, prior to Beneficial Occupancy or Substantial Completion, the Owner may accept such system, however, the cost of maintaining such system in operating condition, and labor costs to operate the system including costs for remote public safety personnel, shall be borne by the Contractor. The guarantee period will begin from the date of Beneficial Occupancy.
- D. 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.

### **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 three (3) work 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 must 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 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. 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 in the performance of 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, paying the cost of any damage to other Work. Final payment to the Contractor constitutes final completion and acceptance of all the Work of the Contract Documents and constitutes Contract Closeout.

**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, 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 or any part thereof, by the Owner. The Contractor shall also pay for any damage to the Work resulting from said defect or fault or damage to other work.

**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.
- B. The Contractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work. 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, 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 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.
- E. The Contractor shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work.

**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 and supplies on and off site in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance and completion. The Contractor shall maintain an inventory of all materials and supplies for the Project that are delivered to the Site or approved for off-site storage facilities.
- C. The Contractor shall immediately report any loss, theft, burglary, vandalism or damage of materials or installed work to the Owner by phone and facsimile 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 and delay or acceleration costs shall be submitted pursuant to Article 10 – Claims and Disputes.
- E. A claim for damage to the Work shall also include the following:
  - 1. A copy of a police report (if applicable).
  - 2. A complete inventory of damaged 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.
- F. The Owner may refuse any claim from the Contractor under this section unless all of the items required in this section are provided to the Owner and are to the satisfaction of the Owner.

### **Section 14.03 - Protection of Lives and Health**

- A. The Contractor shall notify the Owner immediately 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 and a copy of the recorded OSHA Log.
- B. The Contractor 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.
- C. The Contractor 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 a list of witnesses that includes the full name, home address, occupation and telephone number of each person.
- D. 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.
- E. Failure of the Contractor to comply with provisions of this Article shall be deemed a 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 section. 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**

- 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 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, excepting only risks which arise from faulty designs as shown



by the drawings and specifications, unforeseen obstacles or from the negligence of the Owner or the Owner's members, officers, representatives or employees that caused the loss, damage or injuries hereinafter set forth:

1. 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, material men or workmen performing services or furnishing materials for the Work. The Contractor shall bear said risk of loss or damage until Substantial 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. The risk of claims, just or unjust, by third persons against the Contractor or the Owner, the Client, and the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising 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 Contractor's operations or presence at or in the vicinity of the Site. The Contractor shall bear the risk for all deaths, injuries, damage or losses sustained or alleged to have been sustained prior to Substantial Completion of the Work. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained resulting from the Contractor's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the Owner.
3. The Contractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting there from, to all persons, whether employees of the Contractor or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the performance of the Work. If any person shall make said claim for any damage or injury, including death resulting there from, or any alleged breach of any statutory duty or obligation on the part of the Owner, the Client, the Owner's Representative, Construction Manager, servants and employees, the Contractor shall assume the defense and pay on behalf of the Owner, the Client, the Owner's Representative, the Construction Manager, servants and employees, any and all loss, expense, damage or injury that the Owner, the Client, the Owner's Representative, Construction Manager, servants and employees, may sustain as the result of any claim, provided however, the Contractor shall not be obligated to indemnify the Owner, the Client, the Owner's Representative, Construction Manager, servants and employees for their own negligence, if any.
4. The Contractor agrees to assume, and pay on behalf of the Owner, the Client, and the Owner's Representative, Construction Manager, servants and employees, the defense of any action at law or equity which may be brought against the Owner, the Client and the Owner's Representative, Construction Manager, servants and employees. The assumption of defense and liability by the Contractor includes, but is not limited to, the amount of any legal fees associated with defending, all costs of investigation, expert evaluation and any other costs including any judgment or interest or penalty that may be entered against the Owner, the Client, and the Owner's Representative, Construction Manager, servants and employees, in any said action.
5. The Contractor is advised that the Work of the Contract may impose certain obligations and requirements mandated by the U.S. Department of Labor Occupational Safety and Health Administration regulations, Title 29 CFR Part 1926.62 Lead Exposure in Construction, relative to

the potential exposure to lead by its employees. The Contractor assumes entire responsibility and liability for complying fully in all respects with these regulations.

- B. The Contractor's obligations under this 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 notice of loss or damage or claim from the Owner or Owner's Client. The Contractor shall make a claim on its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner or the Client including those of being an additional insured where applicable.
- C. Neither final acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this Article. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall not be deemed to limit the effect of the provisions of this 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 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. Upon the conclusion of any action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the Owner, the Client, or the Owner's members, officers, employees, or representatives, 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 Contractor the percentage of uninsured defense costs which the Contractor incurred based upon an apportionment of the Owner's allocated responsibility.

## 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. 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.
- C. Notwithstanding any other provision in this Article, the Owner may require the Contractor to provide, at the expense of the Owner, any other form or limit of insurance necessary to secure the interests of the Owner.
- D. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Contractor or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the Contractor from any of the obligations or risks accepted by the Contractor or to be a limitation on the nature or extent of said obligations and risks.



### Section 15.02 - Submission of Insurance

- A. Prior to execution of the Contract, the Contractor shall submit one original certificate of insurance, indicating the Project and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide certified copies of each type of insurance policy required by the Contract. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance, when submitted to the Owner, constitute a warranty by the Contractor that the insurance coverage described is in effect for the policy term shown.
- B. The Contractor shall mail original insurance certificates and bonds to the address noted below. All insurance certificates and bonds must be approved by the Owner prior to the Contractor's commencement of Work.

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

### Section 15.03 - Insurance Provided by Contractor

- A. The Contractor and each Subcontractor of every tier shall procure and maintain all of the insurance required under this Article until all Work of the Contract is complete and accepted by the Owner and the Consent of Surety is executed for final payment.
  - 1. Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of \$1,000,000 as evidenced by one of the following certificates (**Acord certificates are no longer acceptable**):
    - a. C-105.2 (September '07, or most current version) - Certificate of NYS Workers' Compensation Insurance. The insurance carrier shall provide a completed form as evidence of in-force coverage.
    - b. U-26.3 - Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund shall provide a completed form as evidence of in-force coverage.
    - c. 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 shall provide a completed form.
  - 2. Disability Benefits:
    - a. DB-120.1 (May '06, or most current version) - Certificate of Disability Benefits. The insurance carrier shall provide a completed form as evidence of in-force coverage.
    - b. DB-155 - Certificate of Disability Self Insurance. 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 contracts.

3. Commercial General Liability (CGL) with a combined single limit for bodily injury, personal injury and property damage of at least \$2,000,000 per occurrence and aggregate; and Products Liability and Completed Operations with an Aggregate limit of \$2,000,000. The limit 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. Written on an occurrence form.
  - b. Include ISO Endorsement CG 20 10 11/85 or its equivalent.
  - c. An endorsement naming the Dormitory Authority - State of New York and if applicable, the Construction Manager, the Client and other entities as additional insured as specified on the sample certificate of insurance in the Bidding Documents. Additional insured status shall apply during the Products/Completed Operations phase as well as during the course of the Work.
  - d. Policies shall be endorsed to be primary as respects the coverage afforded the additional insured and such policy shall be primary to any other insurance maintained by the Owner. Any other insurance maintained by the Owner shall be in excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the "other insurance" clause contained in the Owner's own policy of insurance. A copy of the endorsement reflecting this requirement may be requested by the Owner.
  - e. Excavation, Collapse and Underground Hazards (where applicable).
  - f. Independent Contractors.
  - g. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the General Conditions.
  - h. Products and completed operations coverage for a term no less than three years.
  
4. Commercial Automobile Liability and Property Damage Insurance covering all owned, leased, hired and non-owned vehicles used in connection with the Work, with a combined single limit for bodily injury and property damage of at least \$1,000,000 each person and accident. The limit may be provided through a combination of primary and umbrella and/or excess liability policies.
  
5. Umbrella and/or Excess Liability policies used to follow the form of the 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, but not excess to other insurance maintained by the Owner. The Contractor shall provide a copy of the umbrella and/or excess liability policy declarations page and the underlying schedule of insurance upon the Owner's request. Coverage shall provide and encompass at least the following:
  - a. Written on an occurrence form.
  - b. Include ISO Endorsement CG 20 10 11/85 or its equivalent.
  - c. An endorsement naming the Dormitory Authority – State of New York and, if applicable, the Construction Manager, the Client, and other entities as additional insured as specified on the sample certificate of insurance in the bidding documents.
  
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 additional insured or their agents and employees

responsible for any losses; and the additional insured, their agents and employees shall have no such liability.

**Section 15.04 - Other Insurance Provided by Contractor**

- A. United States Longshoremen and Harbor Workers' Compensation Act: When the Contractor and/or Subcontractors are engaged in maritime activities on or near the navigable waterways of the United States, the Workers' Compensation policy referenced above shall be endorsed to provide this coverage.
- B. Asbestos Abatement Liability: The Contractor or Subcontractors performing any Work which involves asbestos shall provide asbestos liability insurance with a limit of \$2,000,000 per occurrence and aggregate. Coverage shall provide and encompass at least the following:
  - 1. An endorsement naming the Dormitory Authority - State of New York and if applicable, the Construction Manager, the Client, and other entities as additional insured as specified on the sample certificate of insurance in the Bidding Documents.
  - 2. Coverage shall be on an occurrence basis.
- C. Pollution Liability for Hazardous/Contaminated Materials: The Contractor or Subcontractors performing Work involving pollutants, including but not limited to excavation, removal, repair, installation, testing, and petroleum remediation operations for underground petroleum storage tanks shall provide coverage that encompasses at least the following:
  - 1. Pollution Liability with a combined single limit of \$2,000,000 per occurrence and aggregate.
  - 2. Endorsement naming the following as additional insured's: The Dormitory Authority - State of New York and if applicable, the Construction Manager, and other entities specified on the sample certificate of insurance provided by the Owner, if coverage is on an occurrence basis.
  - 3. If coverage is on a claims-made policy form then an extended reporting provision of up to three years after Work is completed is required. If coverage is cancelled or not renewed, then the Contractor shall purchase the extended reporting provision for a period of three years for claims made during the project but reported after the cancellation of the coverage.
  - 4. A maximum Self-Insured Retention of \$50,000, or an amount approved by the Owner.
- D. Railroad Protective Liability: The Contractor and Subcontractors providing Work of the Contract in close proximity to railways that the Contractor determines will require entrance upon railway right of way shall provide Railroad Protective Liability coverage on policy forms AASHO or ISO-RIMA.
  - 1. For information and use, the Transit Authority provides the following information: A Railroad Protective Liability policy covering the Work of the Contract and affording protection for damages arising out of bodily injuries or death, an injury to or destruction of property, shall be required.
  - 2. The Protective Liability insurance policy (I.S.O. Form CG 00 35 11 85 or equivalent) must name the New York City Transit Authority (NYCTA), Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA), Staten Island Rapid Transit Operating Authority (SIRTOA), Metropolitan Transportation Authority (MTA), its subsidiaries and affiliated companies, the City of New York and all other indemnified parties as Named Insured with limits of liability of \$2,000,000 each occurrence on a combined single limit basis the aggregate shall be at least \$4,000,000 for bodily injuries, including death and personal injuries to persons and for damage to property and physical damage to all property owned by, leased by or in the care, custody and control of the Transit Authority.

- E. Delegated Design: The Contractor or Subcontractor performing any work which involves delegation of design shall provide Error and Omissions Professional Liability Insurance for the delegated design work in accordance with the amount indicated in the Contract Documents. A minimum insurance limit of not less than two (2) million dollars for each claim and for an annual aggregate shall be required.

**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. Certificates shall provide thirty (30) days written notice prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. The Contractor shall be responsible to submit updated insurance certificates thirty (30) days prior to any insurance certificate expiration date.
- B. Failure of the Contractor to maintain and provide the Owner with evidence of valid and in-force insurance coverage shall result in a Stop Work Order pursuant to 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 shall immediately cease Work on the Project. The Contractor 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 not having proper insurance required by this Article 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 failure to provide insurance.

**Section 15.06 – Builder’s Risk**

- A. The Owner will provide Builder’s Risk for all projects, except for those projects listed in paragraph B.
  - 1. The Owner shall, except as otherwise specified, at all times during the period of construction and until Substantial Completion, procure and maintain, at the cost and expense of the Owner “All Risk” Builder’s Risk Insurance. The Contractor and Subcontractors will be covered for the Work of the Contract. Losses up to and including \$5,000 shall be borne by the Contractor. Reimbursement for loss, if any, is to be made payable to the Owner. The Owner shall, at the Owner’s sole discretion, have power to adjust and to settle with the insurer any loss or claim under said insurance.
  - 2. Coverage shall include sub-limits for property in transit and for property in storage on and off the job site. Specific higher limits for transit/storage are available as circumstances may require upon request by any Contractor or Subcontractor to the Owner.
- B. The Contractor shall provide Builder’s Risk for all OMH/OPWDD/OASAS projects, or when otherwise specified.
  - 1. The Contractor shall maintain until the date of Substantial Completion, All Risk Builder’s Risk completed Value Form, with coverage for 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. When applicable, the Contractor’s Interest Completed Value form may be used.

The extended coverage endorsement may include a loss deductible acceptable to the Owner. Losses up to and including the deductible provision shall be borne by the Contractor.

2. Each Builder's Risk policy shall include the following endorsement:

*"It is made a condition of this insurance that until the Owner issues the Notice of Substantial 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."*

3. Builder's Risk policies shall be issued by insurance companies authorized to conduct such business under the laws of the State of New York, shall name the Dormitory Authority – State of New York, the Contractor Loss Payees as their interests may appear and shall run until the date of Substantial Completion. Policies expiring on a fixed date before Substantial Completion shall be renewed not less than thirty (30) days before such expiration date. Such policy shall not be changed by endorsement without the knowledge and consent of the Owner and in particular, no notice of cancellation by the insurer shall be effective until sixty (60) days after such notice is received by the Owner.
4. 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 are provided to the Owner pursuant to Section 15.06.

#### **Section 15.07 - Bonds Provided by Contractor**

- A. The Contractor shall provide a performance bond in an amount at least equal to 100% of the Contract sum as security for the faithful performance of the Contract. The Contractor shall also provide a payment bond in an amount at least equal to 100% of the Contract sum for the payment of all persons performing labor or providing materials in connection with the Work of the Contract. The Contractor shall execute bond forms included as part of the Contract Documents.
- B. If at any time the Owner 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) days after 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 and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner.

### **ARTICLE 16 -- GENERAL PROVISIONS of the CONTRACT**

#### **Section 16.01 - General Law Provisions**

- A. The laws of the State of New York shall govern the Contract.
- 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.

**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 (6NYCRR 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 Section 16.02.

**Section 16.03 – State and Federal 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 the performance of the Work.
- B. The Contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
1. No worker, in the employ of the Contractor, all Subcontractors or 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 the 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 law.
  3. The minimum hourly rate of wage to be paid and supplement provided should be not less than that stated in the Contract 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 notice 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 a notice to all workers of the prevailing wage rate for all worker's particular job classification on each pay stub and to post a notice at commencement of the Work 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 New York State 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, herein 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. 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 New York State 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 Labor Law. The Contractor and all Subcontractors shall submit original copies of the Contractor and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request.
  
- 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 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 Labor Law the Contract shall be forfeited and no sum paid for any Work done there under 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 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 must pay the higher of either New York State prevailing wage rates or wages established for the locality of the project by the Federal 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 as having successfully completed the OSHA 10 hour construction safety and health course.

**Section 16.04 - Nondiscrimination**

During the performance of the Work, the Contractor agrees as follows:

- A. If directed to do so by the Commissioner of Human Rights, the Contractor will send to each labor union or representative of workers with which the Contractor 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 such labor union or representative of the Contractor's agreement under clauses A through E (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the Owner as part of the bid or negotiation of this Contract, the Contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such 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 such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

- B. If directed to do so by the Commissioner of Human Rights, the Contractor 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 these nondiscrimination clauses and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- C. The Contractor will comply with the provisions of Section 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscriminatory clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.
- D. This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Owner upon the basis of a finding made by the State Commissioner of Human Rights that the Contractor has not complied with these nondiscrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the Contractor satisfies the State Commissioner of Human Rights that the Contractor has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Such 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 Contractor and an opportunity has been afforded the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- E. The Contractor will include the provisions of these nondiscrimination clauses in every Subcontractor purchase order in such a manner that such provisions will be binding upon each Subcontractor or vendor as to the operation to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such Subcontract or purchase order as the State Commissioner of Human Rights or the Owner may direct, including sanctions or remedies for noncompliance. If the Contractor becomes involved in or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the Owner, the Contractor shall promptly so notify the Attorney General requesting the Attorney General to intervene and to protect the interests of the State of New York.



F. Pursuant to 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 operation 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 of the Contract, or when one final determination involves the falsification of payroll records or the kickback of wages and/or supplements.

#### **Section 16.05 - Domestic Steel**

The Dormitory Authority is required to comply with all provisions of Title 4 of Article 9 of the Public Authorities Law and in accordance therewith, the Owner may require that structural steel, reinforcing steel or other major steel items to be incorporated into the Work of the Contract in excess of \$100,000 be produced or made in whole or substantial part in the United States, its territories or possessions.

#### **Section 16.06 – General Contract Provisions**

- A. 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 for the Contract, (3) other non-Dormitory Authority moneys made available from whatever source specifically for the Contract and no liability shall be incurred by the Owner beyond moneys available therefore.
- B. 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.
- C. It is understood that the Client is an intended third party beneficiary of the Contract for the purposes of recovering any damages caused by the Contractor.
- D. The Contractor shall not assign the Contract in whole or in part without prior written consent of the Owner. 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.

- E. 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.
- F. The Owner is exempt from the terms of fair trade agreements for sales to the Contract.

**Section 16.07 - Failure to Comply with Article 16**

- A. The Owner will not be responsible for any Claim arising from compliance with this Article 16.
- B. The Contract shall be void and of no effect unless the Contractor complies with this Article 16.

**ARTICLE 17-- AUDITS/INVESTIGATIONS/ETHICS**

**Section 17.01 - Owner's Right to Audit**

The Contractor shall maintain and keep, for a period of at least six (6) years after the date of final Application for Payment, all records and other data relating to the Work, including records of Subcontractors and material suppliers. The Owner shall have the right to inspect and audit all records and other data of the Contractor, Subcontractors and material suppliers relating to the Work. The costs of an audit, bourn by the Owner, may be deducted from the Contract amount.

**Section 17.02- False Statements/Information/Disclosure**

Failure to comply with Section 17.01, providing False Representations, false statements or inaccurate information submitted 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:

1. Termination of the Contract for cause, pursuant to Section 11.01.
2. Rejection of future bids or disapproval of a contract and subcontract.
3. Withholding of payments.
4. Criminal prosecution.
5. Civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.
6. Rejection of a Claim or Change Order.

**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; 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.

- 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 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 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 into 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 section. The Contractor shall not enter into 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 Article shall justify termination of this Contract and may result in the Owner's rejection of the Contractor's bids or proposals for future contracts.

**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 Uniform Contracting Questionnaire, 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, 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 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 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 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 Agreement 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 the Agreement.
  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 in 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 Agreement 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 Education Law of the State of New York. The Contractor at the Site shall post notices containing the text of the aforementioned rules and regulations.

#### **Section 17.06 - Ethical Conduct**

- 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, 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 *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.

1. In addition to the prohibition of Section 73(5) of the *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 should 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 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 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 Section.
- H. Any violation of Section 17.06 shall justify termination of this Agreement 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 into 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 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 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 breach.

**Section 17.08 – Iran Divestment**

- A. By entering into 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 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 State Finance Law.
- B. 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 Contractor in default.

**ARTICLE 18 -- 2005 PROCUREMENT LOBBYING LAW**

**Section 18.01 - Laws of 2005**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, require bidders to affirm their understanding of and agree 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.

**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, *2005 Procurement Lobbying Law – Certification*, pursuant to State Finance Law § 139-j and § 139-k. The information contained in *2005 Procurement Lobbying Law – Certification*, pursuant to 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 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 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, 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 shall be submitted as requested by the Owner.
- B. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the Owner in making an award determination.

## **ARTICLE 20 -- OPPORTUNITY PROGRAMS**

### **Section 20.01 - General Provisions**

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. These requirements include: equal employment opportunities for minority group members and women (EEO), plus contracting opportunities for certified minority and women-owned business enterprises (M/WBE). The Contractor's demonstration of good faith efforts shall also be a part of these requirements.

- A. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Labor Law or other applicable federal, state or local laws.

### **Section 20.02 – Equal Employment Opportunity (EEO)**

- A. The Contractor 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. In any circumstances of uncertainty or conflict, the Regulations of the Division of Minority and Women's Business Development supersede this information.
- B. Implementation of NYS Executive Law Article 15-A by the Owner shall require the Contractor to be bound by the following clauses and provide the Owner with the following information:

1. The Contractor and Subcontractors 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. The Contractor shall submit an EEO policy statement to the Owner within seventy two (72) hours after the date of the Letter of Intent to award Contract.
3. If a Contractor or Subcontractor does not have an existing EEO policy statement, the Owner may provide the Contractor or Subcontractor a model plan.
4. The Contractor's EEO policy statement shall include the following:
  - 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 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 submit a Six Month Workforce Utilization Schedule prior to commencement of the Work of the Contract.
6. To ensure continuous compliance with Section 20.02 during the life of the Contract, the Contractor and Subcontractors shall submit to the Owner a Monthly Workforce Utilization Report.
7. The Contractor shall include the provisions of Section 20.02 in each Subcontract in such a manner that the requirements will be binding upon each Subcontractor.

**Section 20.03 – Opportunities for Minority and Women-Owned Business Enterprises (M/WBE)**

- A. The Contractor 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. In any circumstances of uncertainty or conflict, the Regulations of the Division of Minority and Women's Business Development supersede this information.



- B. Implementation of NYS Executive Law Article 15-A, by the Owner shall require the Contractor to be bound by the following clauses and provide the Owner with the following information:
- C. The Owner requires the Contractor to submit a Statewide Utilization Management Plan (“SUMP”) via the NYS Contract System per Job Order. Hard copies of the plan will no longer be accepted and no award can be made without an approved plan. Please login to the NYS Contract System at <https://ny.newnycontracts.com> to view and complete the SUMP. If you are a new user, click on **Account Lookup**” to identify your account by company name. You can then **Request New User**” to be set up so that you can access the account. **It is important that the staff member who is responsible for reporting payment information for your firm is also set up as a user in the System.** Email notifications regarding the approval/denial of the plan will come from the New York State Contract System so please ensure the address is listed in your contacts to avoid messages being deleted as spam. If you have any questions regarding the submittal of the SUMP, please contact Rachel Scaccia at 518-257-3358 (rscaccia@dasny.org). If you have any questions regarding MWBE Utilization, please contact Thomas Christian, Assistant Director, OPG Upstate at 518-257-3795 (tchristian@dasny.org) or Wayne Benjamin, Assistant Director, OPG Downstate at 212-273-5114 (wbenjamin@dasny.org).
1. The Contractor shall submit to the Owner, the Statewide Utilization Management Plan (“SUMP”) within seventy two (72) hours after being notified of low bid status. The SUMP shall list all proposed subcontractors and material purchases including an identification of the NYS Empire State Development Corporation (“ESD”) certified M/WBE Subcontractors and suppliers the Contractor intends to use to perform the Work of the Contract and to achieve the participation goals established in the Contract Documents. The **Scope Verification Form** shall accompany the SUMP for each M/WBE subcontractor listed on the SUMP. Only NYS ESD certified M/WBEs are to be submitted in the SUMP and will qualify for M/WBE credit. The Owner or ESD can assist the Contractor in locating NYS certified M/WBEs.
  2. The Owner will review the SUMP and issue the Contractor a notice of acceptance or deficiency within twenty (20) days of its receipt. A notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the M/WBE participation goals and the reasons why it is not acceptable; (ii) elements of the Work of the Contract, which the Owner has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by M/WBEs; and (iii) other information which the Owner determines to be relevant to the SUMP.
  3. The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Owner a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Owner to be inadequate, the Owner shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a Request for Waiver. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid.
  4. The Contractor who has written documentation of good faith efforts to obtain commitments from M/WBE Subcontractors and suppliers prior to submitting the SUMP may submit a request for waiver form at the same time it submits the SUMP. If a Request for Waiver is submitted with the SUMP and is not accepted by the Owner, the provisions of clauses (i) and (ii) regarding the notice of deficiency and written remedy will apply. In this case, the Contractor may submit a second Request for Waiver as directed by the Owner.

5. If the Contractor does not submit a SUMP, remedy deficiencies in the SUMP, submit a Request for Waiver, or if the Owner determines that the SUMP does not indicate that the M/WBE participation goals will be met and/or that the Contractor has failed to document good faith efforts, the Owner may disqualify the Contractor as being not-responsible.
6. The Contractor shall attempt to utilize, in good faith, any M/WBE identified within the SUMP, at least to the extent indicated in the SUMP.
7. The Contractor shall submit to the Owner, within thirty (30) days from the acceptance of the SUMP, copies of executed subcontract agreements and the excepted schedule of values for each M/WBE subcontractor or fully executed purchase order agreements to M/WBEs suppliers identified on the accepted Utilization Plan. Each executed agreement shall include reference to the Contract.
8. The Contractor shall submit to the Owner detailed invoices or requisitions from M/WBEs, which identifies service, materials, equipment and supplies applicable to the Contract.

**Section 20.04 - Good Faith Efforts and Guidelines**

- A. The Contractor must demonstrate it has made good faith efforts to comply with the requirements of the Contract Documents and submit documentation to enable the Owner to make a determination for compliance with the provisions of this Article.
- B. The Contractor shall utilize the following guidelines in preparing good faith efforts documentation:
  1. Attach a copy of the completed SUMP 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 Dormitory Authority'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 seek additional assistance from one of the Owner's Technical Assistance providers? If yes please provide documentation of your interaction.
  11. 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?
  12. 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.
  13. 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?
  14. 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?
  15. 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?
  16. List any special considerations and/or concerns, which are preventing adequate New York State certified minority and women-owned business enterprises to participate.
- C. Responses to information in the Guidelines above should be given in an item-by-item format following the numerical sequence as presented and submitted with the Request for Waiver to the Owner. If the Contractor fails to adequately document and respond to each item, it may result in a finding of non-compliance. For assistance, please contact the Owner's Opportunity Programs Group at 518- 257-3465 - Upstate or 212-273-5111 - Downstate.

### **Section 20.05 - Waivers**

- A. If the Contractor, after making good faith efforts, is unable to comply with M/WBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such 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) days of receipt.
- B. If the Owner, upon review of the SUMP and updated Compliance Reports, determines that the Contractor is failing or refusing to comply with the Contract Document goals and no waiver has been issued in regards to such non-compliance, the Owner may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice to deficiency within seven (7) days of receipt. Such response may include a request for partial or total waiver of M/WBE participation goals.

**Section 20.06 - Administration Hearing on Disqualification**

- A. If the Owner disqualifies a bid for any of the reasons set forth in Section 20.02, the Contractor shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the Owner to review the determination of disqualification of the bid and determination of non-responsibility of the Contractor.
- B. The hearing officer's determination shall be the final determination of the Owner. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within thirty (30) days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Executive Law Article 15-A, §-313.

**Section 20.07 – Complaints and Liquidated Damages - M/WBE Participation**

- A. If the Owner determines that the Contractor is not in compliance with the requirements of this Article and the Owner is unsuccessful in its efforts to resolve the matter and bring the Contractor into compliance with the requirements, the Owner may file a complaint with the Director of the Division of Minority and Women's Development in the Department of Economic Development ("Director") according to the provisions of Executive Law Article 15-A, §§ 313 & 316 or may assess liquidated damages pursuant to § 316-a.
- B. Subsequent to the award of this Contract, if the Contractor submits a Request for Waiver of Minority and Women-Owned Business Enterprises ("M/WBE") participation goals and the Owner denies the request or fails to respond within twenty (20) days of receiving it, or if the Contractor has received a written determination from the Owner that the Contractor has failed or refused to comply with the provisions of this Article, the Contractor may file a complaint with the Director in accordance with the provisions of Executive Law Article 15-A, §§ 313 & 316.
- C. The complaint must be filed within twenty (20) days of the Owner's receipt of the Request for Waiver. If the Owner fails to responded in that time, or within twenty (20) days of a notification that the request has been denied by the Owner or within twenty (20) days of receipt of notification from the Owner that the Contractor has failed or refused to comply with the goals.
  - 1. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
  - 2. The party filing a complaint, whether the Contractor or the Owner, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
  - 3. Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty (30) days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the Owner and the Contractor, the complaint shall be referred to the Division of Minority and Women Business Development's hearing officers. Upon conclusion of the administrative proceeding, the hearing officer will submit to the Director his or her award regarding the alleged violation of the Contract or refusal of the Owner to grant a waiver request by the Contractor and recommendations regarding the imposition of fines, sanctions or penalties.

4. The Director, within ten (10) days of receipt of the hearing officer's decision, will issue a determination of such matter and shall cause a copy of such determination to be served upon the contractor by personal service or by certified mail, return receipt requested. The decision of the hearing officer as to the imposition of fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
  5. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the Contractor or the Contractor's willful and intentional disregard of the M/WBE participation requirement included in the Contract may include a determination that the Contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such Contract for up to one year following the final determination.
  6. If a Contractor has previously been debarred, the penalties imposed for any subsequent violations, if such violation occurs within five years of the first violation, may result in debarment for up to five (5) years after the final determination. Such information shall be posted on the Division of Minority and Women Business Development's web site.
  7. The determination of the Owner or the Contractor to proceed with a complaint shall not preclude the Owner, in its discretion, from pursuing any other remedies which it may have pursuant to law and Contract, including withholding from payments to the Contractor the estimated amount of the fines and penalties which may be imposed pursuant to this Article. Said amounts shall be the difference between the planned dollar amount of M/WBE subcontract awards and the actual dollar amount of such awards.
- D. In lieu of the complaint procedures set forth in paragraphs "A" through "C" of this Article, if the Owner determines that the Contractor willfully and intentionally fails to comply with the requirements of this Article, the Contractor shall be obligated to pay to the Owner liquidated damages in an amount not to exceed two hundred thousand dollars (\$200,000) to compensate the Owner for estimated expenses that would otherwise be incurred by the Owner to enforce the provisions of this Article and Article 15-A of the Executive Law, including enforcement proceedings against the Contractor pursuant to Section 316 of the Executive Law. The Contractor shall pay such liquidated damages to the Owner within sixty (60) days after they are assessed by the Owner unless prior to the expiration of such sixtieth day, the Contractor shall file a complaint with the Director pursuant to subdivision 8 of Section 313 of the Executive Law.

**Section 20.08 – Reporting to Owner**

- A. The Contractor shall complete the following reports and submit as indicated to establish and update EEO and M/WBE requirements during the life of the Contract. Reports not submitted at such time shall be cause for the Owner to delay implementing scheduled payment to the Contractor. The listed reports are hereby made a part of the Contract and copies are included in the Contract Documents and template forms are also available on the Dormitory Authority's web site, <http://www.dasny.org>. To become more familiar with the Opportunity Program Requirements, a Pre Bid Meeting Outline is available on the Dormitory Authority's website.
1. **Statewide Utilization Management Plan ("SUMP"):** the Contractor shall submit to the Owner within seventy two (72) hours after the date of the Letter of Intent. If a request for waiver will be submitted, part C of the Utilization Plan shall be completed along with the applicable documentation of the good faith efforts.

2. **Scope Verification Form:** the Contractor shall submit with the Utilization Plan, completed forms for each M/WBE subcontractor listed on the plan. Incomplete or non-submittal of the form will delay approval of the Utilization Plan.
3. **Six Month Workforce Utilization Schedule:** the Contractor shall submit to the Owner prior to commencement of the Work of the Contract.
4. **Compliance Report:** the Contractor shall submit an updated report with each Application for Payment request.
5. **Weekly Workforce Report:** the Contractor shall maintain at the Project Site for the Owner's review.
6. **Monthly Work Force Utilization Report:** the Contractor shall submit to the Owner an updated report each month during the life of the Contract.



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# **JOB ORDER CONTRACTING PROGRAM**

## **WAGE RATES**

### **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](http://www.dasny.org)

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## Wage Rate Information and Web Links

Contractors are responsible for obtaining and paying the appropriate wages for the locale in which they are working. The web link below is provided to assist the contractors in obtaining the most recent Prevailing Wages for the type of work and locale in which they are working.

<http://www.labor.state.ny.us> or <http://www.labor.ny.gov/home/>

See Volume IV on DASNY's Website for NYS DOL Wage Information for this solicitation.

The web link below is provided for the assigned Wage Rates for the Projects listed in the Contract Documents:

CR452: <https://applications.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1474190>

CR453: <https://applications.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1474191>

**April 2017**

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