

Date

Dormitory Authority State of New York
Term Contract No.: TBD

CONTRACT

A Contract is hereby made by and between **Dormitory Authority – State of New York** (“OWNER”), having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964, hereinafter referred to as the OWNER, and [**Firm Name**], whose office is located at [Address], hereinafter referred to as the CONSTRUCTION MANAGER; and

WHEREAS, the OWNER will be engaged in the construction and rehabilitation of various facilities in New York State, for which the CONSTRUCTION MANAGER may be called upon to provide services defined in a unilateral amendment identified as a Work Authorization, which shall hereinafter be referred to as the Project; and

WHEREAS, the OWNER has requested the CONSTRUCTION MANAGER to provide oversight and administrative services during the Design, Construction and General Conditions Phases as requested herein and specifically identified within each Work Authorization; and

WHEREAS, the OWNER and the CONSTRUCTION MANAGER have agreed upon a pricing schedule to be utilized in conjunction with the assignment of work to calculate compensation for services requested and authorized under this Contract;

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

ARTICLE I: TERM OF CONTRACT

The term of this Contract for the assignment of Work Authorizations shall be from [Date] through [Date], except that any and all Work Authorizations assigned within said term shall be completed regardless of the contract completion date. The CONSTRUCTION MANAGER shall continue to render services for each Work Authorization it is assigned within the term of this Contract and until the completion of said Work Authorizations unless the OWNER gives written notice to the contrary.

The CONSTRUCTION MANAGER's Services are contained in Appendix "A" entitled, “**SCOPE OF SERVICES**” which is attached hereto and made a part hereof and shall serve as a directory from which specific services shall be assigned as each Work Authorization is issued.

ARTICLE II: ADDITIONAL SERVICES

The OWNER reserves the right to direct the CONSTRUCTION MANAGER to provide Additional Services and the CONSTRUCTION MANAGER shall provide said Additional Services when so directed.

ARTICLE III: EXTRA WORK

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

ARTICLE IV – M/WBE & SDVOB CONTRACT GOALS

The N.Y.S. certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) goals for this contract are [TBD]% MBE, [TBD]% WBE and [TBD]% SDVOB. The goals refer to the utilization of M/WBE and SDVOB subconsultants on the OWNER’s Professional Services Contracts. With each project assignment the firm will be required to submit a new plan with dollar amounts.

ARTICLE V: CONSULTANTS

A. The OWNER may retain a consultant or consultants to furnish services throughout the term of this Contract, and the CONSTRUCTION MANAGER shall cooperate with said consultant or consultants.

B. The CONSTRUCTION MANAGER may propose and engage subconsultants, hereinafter referred to as “Approved Subconsultants”, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed subconsultant and, in such event, the CONSTRUCTION MANAGER shall propose another subconsultant for that portion of the required services. The CONSTRUCTION MANAGER shall be responsible to the OWNER for the timely and efficient completion of all services performed by said Approved Subconsultants.

C. The CONSTRUCTION MANAGER shall remove from the Project any employee of the CONSTRUCTION MANAGER, any employee of the subconsultant or the subconsultant when so directed by the OWNER.

D. Prior to execution of a Contract between the CONSTRUCTION MANAGER and proposed subconsultant, the CONSTRUCTION MANAGER shall submit a copy of the proposed subconsultant Contract to the OWNER for approval. The OWNER shall not be liable for payment to the CONSTRUCTION MANAGER for any cost incurred under any subconsultant contracts unless said approvals are obtained. The fees of any subconsultants retained by the CONSTRUCTION MANAGER for services required under Article I shall be deemed covered by the compensation as stipulated in Article VI.A. The fees of any subconsultants retained by the CONSTRUCTION MANAGER for services required under Article III shall be paid as outlined in Article VI.A.3.

E. The CONSTRUCTION MANAGER shall pay its subconsultants the full amount due them from their proportionate share of each requisition for payment submitted by the CONSTRUCTION MANAGER and paid by the OWNER. The CONSTRUCTION MANAGER shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.

F. All services rendered by the CONSTRUCTION MANAGER for each Project shall be performed by or under the immediate supervision of experienced professional(s) licenses and registered in the State of New York possessing expertise in the discipline of the service being rendered. If the CONSTRUCTION MANAGER chooses to sub-contract or affiliate with another professional entity or organization for all or any portion of the CONSTRUCTION MANAGER’s scope of services, the CONSTRUCTION MANAGER shall sub-contract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services. The CONSTRUCTION MANAGER shall furnish professional services in accordance with sound professional standards consistent with those practiced by professional firms on projects similar in size, complexity and cost to the Project.

ARTICLE VI: PROVISION FOR PAYMENT

A. Design and Construction Phases – Including Supervision and Administration of General Conditions Work.

For satisfactory performance of all Design and Construction Phase Services pursuant to Appendix "A", the OWNER shall pay, and the CONSTRUCTION MANAGER agrees to accept as full compensation, the following payment:

1. Actual Direct Salary of all employees of the CONSTRUCTION MANAGER, other than Principal and/or Executive level staff, assigned to the Project. Actual direct salary, as used herein, shall not include allowances for insurances, payroll taxes, or other benefits listed under Fringe Benefits in item A (2).

The CONSTRUCTION MANAGER's leave payment policy is subject to pre-approval by the OWNER. Pay rates for employees and their appropriate titles are listed in Appendix "C" entitled, "**APPROVED CLASSIFICATIONS AND RATES**" which is attached to and made a part hereof.

Payroll records for all employees for which reimbursement is sought under Article VI (A) shall be supplied to the OWNER upon request and made available to the OWNER for inspection or audit at the OWNER's option at any time during the life of this Contract and for a period of six (6) years after final payment.

Reimbursement to the CONSTRUCTION MANAGER for actual direct salary costs for Design and Construction Phase Services shall be established in a "Not to Exceed" amount for each Work Authorization based on the hourly rates paid by the CONSTRUCTION MANAGER to the employees on the Project.

2. Fringe Benefits are the actual costs to the CONSTRUCTION MANAGER of fringe benefits applicable to actual direct salary costs pursuant to Article VI(A)(1), above. Allowable fringe benefit items as provided for herein shall be limited to the following specific items:

- a. F.I.C.A.;
- b. Federal Unemployment Insurance;
- c. State Unemployment Insurance;
- d. New York State Workers Compensation;
- e. Life Insurance;
- f. Accidental Death and Dismemberment;
- g. New York State Disability Insurance;
- h. Group Hospitalization;
- i. Pension Plan;
- j. Group Travel Accident Insurance; and
- k. Leave time pursuant to the CONSTRUCTION MANAGER's approved leave policy*.

*Shall be negotiated with each work assignment.

Reimbursement to the CONSTRUCTION MANAGER of fringe benefit costs for Design and Construction Phase Services shall be paid at ___% of the actual direct salary costs and shall not exceed the amount for each Work Authorization.

If the CONSTRUCTION MANAGER, at any time, estimates that the total of actual direct salary and fringe benefit costs may exceed the above total, it shall promptly notify the OWNER in writing giving full explanation for such increase. If the OWNER agrees that said increase is necessary and justified, the Work Authorization shall be amended to reflect the increased amount. No liability shall accrue to the OWNER until such time as written approval and authorization for said increase has been given by the OWNER to the CONSTRUCTION MANAGER.

3. Consultant's Costs, if required, shall be approved by the OWNER. Monthly bills for said consultant's costs shall be submitted to the OWNER together with sufficient supporting

documentation in form and content satisfactory to the OWNER. The CONSTRUCTION MANAGER shall not be reimbursed any markup on consultant's costs.

4. Fees will be paid in the amount established by each Work Authorization, which includes all home office overhead, Principal and/or Executive level involvement, and profit.

a. The Design Phase Fee, pursuant to Article VI (A) (4), is not a fixed fee and is payable as a percentage of the total monthly cost for actual direct salaries. The Design Phase fee will be paid at ___% of the actual direct salaries.

b. The Construction Phase Fee, pursuant to Article VI(A)(4), for Construction Phase Services, including supervision and administration of General Conditions Work, is a fixed fee and shall be reimbursed in proportion to the percentage of completed and OWNER-approved construction work. The construction phase fee for construction phase services will be based on ___% of the actual direct salaries. If construction is not completed at the time of the planned completion date, as stated in each Work authorization, the OWNER shall continue to pay salaries and fringes, to the completion of the work, and no additional fee will be paid. However, if the OWNER agrees that it is through no fault of the CONSTRUCTION MANAGER that the completion date is not met, and the OWNER must provide for additional salaries, the fee will become renegotiable upon the additional direct salary, only.

c. The Technical Services Fee, pursuant to Article VI (A) (4), is not a fixed fee, and is payable as a percentage of the total monthly cost for actual direct salaries. The Technical Services Fee will be paid at ___% of the actual direct salaries.

Payment of General Conditions Work

5. For satisfactory performance of all the work, the OWNER shall reimburse the CONSTRUCTION MANAGER the actual cost of performing or providing the General Conditions work in accordance with the following:

a. For performance of all the work, the CONSTRUCTION MANAGER shall be paid the actual cost of all labor, materials, and supplies necessary, proper for, or incidental to the performance of said work. If the CONSTRUCTION MANAGER, at any time, estimates that the total cost of the work may exceed this amount, it shall promptly notify the OWNER in writing providing a full explanation for said increase. If the OWNER agrees that said increases are necessary and justified, the Work Authorization may be amended to increase said amount. No liability shall accrue to the OWNER until such time as written approval and authorization for said increases has been given by the OWNER to the CONSTRUCTION MANAGER. This sum shall be deemed to be full compensation for the performance by the CONSTRUCTION MANAGER of all duties and obligations of the CONSTRUCTION MANAGER for the work of this Contract.

b. The CONSTRUCTION MANAGER shall submit monthly payment requisitions and a Compliance Report in a form and content satisfactory to the OWNER. Said requisitions shall clearly describe the nature and extent of the CONSTRUCTION MANAGER's actual expenditures for labor, materials, and supplies during the period covered by the requisition. The requisition shall also include any bills received from subcontractors, which shall be the same form as those submitted by the CONSTRUCTION MANAGER to the OWNER.

6. The MAXIMUM AMOUNT PAYABLE to the CONSTRUCTION MANAGER for all services required pursuant to this Contract is as set forth in paragraphs 1 through 5 of this Article. The MAXIMUM AMOUNT PAYABLE will be summarized in Appendix "B" entitled, "SUMMARY OF PAYMENTS" which is attached hereto and made a part hereof.

Payments for services shall be made monthly in proportion to services performed and approved by the OWNER. Payments shall be requisitioned on the OWNER's form entitled, "**PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION**" form together with a copy of the payroll records, a Compliance Report, and any and all other appropriate backup, as deemed necessary. Payroll shall show the names and rates of pay of all personnel performing services during the payment period, as well as their position classification. This form shall be used for reimbursement of services, only.

The CONSTRUCTION MANAGER is required to submit payment requests to the OWNER, on behalf of subconsultants, within thirty (30) days of receiving approvable subconsultant invoices.

ARTICLE VII: WITHHOLDING OF PAYMENTS

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

- A. to assure payment of just claims of any persons supplying labor or materials for the Work;
- B. to protect the OWNER from loss due to defective Work not remedied;
- C. to protect the OWNER, Client or other such entities as identified by the OWNER as Additional Insureds from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of others caused by the act or neglect of the CONSTRUCTION MANAGER or subconsultant. Client is herein defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations or fiduciaries;
- D. to assure payment of fines and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to the provisions of this Contract; or
- E. to assure payment of fines and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to Article 17 - Affirmative Action in the Additional Items Appendix, Section D.6, subdivision i. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

ARTICLE VIII: FINAL PAYMENT AND RELEASE

Final payment shall be made to the CONSTRUCTION MANAGER upon satisfactory completion and acceptance by the OWNER of all services required, by the CONSTRUCTION MANAGER pursuant to this Contract, or all services performed prior to the termination of said Contract, if so terminated and upon submission of a certification that all subconsultants/subcontractors have been paid their full and agreed compensation.

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

ARTICLE IX: OWNER'S PROCEDURE

The CONSTRUCTION MANAGER agrees to comply with all procedural requirements of the OWNER and the Client as they apply to reports or other aspects of the Project.

ARTICLE X: INSURANCE PROVIDED BY CONSTRUCTION MANAGER

- A. The CONSTRUCTION MANAGER shall purchase and maintain, at its own expense, insurance policies containing the following types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction Phase Services by the CONSTRUCTION MANAGER or by anyone directly or indirectly employed by the CONSTRUCTION MANAGER, or by anyone for whose acts the CONSTRUCTION MANAGER may be liable. The CONSTRUCTION MANAGER shall obtain all the insurance required under this Contract for Construction Management Services and provide the OWNER or the OWNER's designee proof of insurance in such forms as requested and deemed acceptable by the OWNER, indicating the Project, and showing evidence of all insurance required under this Contract for Construction Management services prior to the Effective Date
- (i) Workers' Compensation Law Requirements
- (a) Workers' Compensation (including occupational disease) and Employer's Liability Insurance. Full New York State (NYS) Workers' Compensation and Employer's Liability coverage shall be provided as evidenced by **ONE** of the following **(ACORD certificates are not acceptable)**:
- (1) C-105.2 (September 2015, or most current version) - Certificate of NYS Workers Compensation Insurance Coverage. The insurance carrier will provide a completed form as evidence of in-force coverage.
 - (2) U-26.3- (or any replacement) NYS Insurance Fund Certificate of Workers Compensation Coverage. The NYS Insurance Fund will provide a completed form as evidence of in-force coverage.
 - (3) GSI-105.2 (2/02 or most current version) - Certificate of Participation in Workers Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator shall provide a completed form.
 - (4) SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Worker's Compensation Board's Self-Insurance Office or The CONSTRUCTION MANAGER's Self-Insurance Administration shall provide a completed form.
- (b) Disability Benefits insurance. Full NYS Disability Benefits coverage for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law shall be provided and evidenced by one of the following certificates:
- (1) DB-120.1 (September 2015, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law. The insurance carrier shall provide a completed form as evidence of in-force coverage.
 - (2) DB-155 (9/16) - Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.

- (3) CE 200 - Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. DASNY will *not* accept this as an exemption from providing Workers' Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at <http://www.wcb.state.ny.us>. The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contract.
- (ii) Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the CONSTRUCTION MANAGER for bodily injury, property damage, and personal/advertising injury arising from performance of the CONSTRUCTION MANAGER Services or operations or presence at or in the vicinity of the Site of the Project. The policy shall utilize ISO form CG 00 01 12 07 or a form providing equivalent coverage. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least \$5,000,000; the general aggregate limit shall be at least \$5,000,000; the personal and advertising injury limit shall be at least \$5,000,000; and the Products Completed Operations limit shall be at least \$5,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
- (a) If the CONSTRUCTION MANAGER proposes the use of a policy other than the ISO form CG 00 01 12 07, the CONSTRUCTION MANAGER shall provide the proposed policy to the OWNER which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The CONSTRUCTION MANAGER shall pay the OWNER any attorney fees and other costs incurred by the OWNER in determining whether the proposed policy provides equivalent coverage. OWNER will select the attorney providing advice on the proposed policy.
 - (b) ISO Endorsement Forms CG 20 10 11/85 and CG 20 37 10 01, or their equivalents, specifically naming the OWNER, the Client, [and] the CONSTRUCTION MANAGER, if applicable, and the New York State Department of Mental Hygiene, Office of Mental Health, DASNY and the State of New York as Additional Insureds, and for form CG 20 37 10 01 or its equivalent, specifically listing the Project location.
 - (c) If the CONSTRUCTION MANAGER proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 11/85 and CG 20 37 10 01, the CONSTRUCTION MANAGER shall provide the proposed endorsement(s) to the OWNER which, in its sole and exclusive discretion, will determine whether the proposed endorsement(s) provides equivalent coverage. The CONSTRUCTION MANAGER shall pay the OWNER any attorney fees and other costs incurred by the OWNER in determining whether the proposed endorsement(s) provide equivalent coverage. OWNER will select the attorney providing advice on the proposed endorsement(s).
 - (d) Additional Insured status for the OWNER, Client, and CONSTRUCTION MANAGER, if applicable, shall apply during the Products/Completed Operations phase and during the course of providing the CONSTRUCTION MANAGER Services.
 - (e) Excavation, Collapse and Underground Hazards.
 - (f) Independent contractors/subcontractors.
 - (g) Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in this Contract for Construction Management Services, and covering tort liability of another assumed in a contract.

- (h) Products and Completed Operations coverage for a term of no less than three (3) years commencing upon issuance by the OWNER of the Notice of Physical Completion.
 - (i) Premises liability.
 - (j) Defense and/or indemnification obligations, including obligations assumed under this Contract for Construction Management Services.
 - (k) Cross liability for additional insureds
 - (l) Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
 - (m) ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
 - (n) Policy or policies must be written or endorsed to be primary and non-contributory as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by DASNY. Any other insurance maintained by DASNY shall be excess of and shall not contribute with the CONSTRUCTION MANAGER's or its Subconsultant's insurance, regardless of the "other insurance" clause contained in DASNY's own policy of insurance.
- (iii) Commercial Comprehensive Automobile Liability covering all owned, leased, hired and non-owned vehicles used in connection with the Work with combined single limits of not less than one million Dollars (\$1,000,000.00) per each person/each accident for bodily injury and property damage.
 - (iv) Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability.
 - (v) Professional Liability insurance: The CONSTRUCTION MANAGER and any Subconsultant performing any Work shall procure and maintain Professional Liability Insurance or Errors and Omissions Liability Insurance, as applicable, for the Work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the CONSTRUCTION MANAGER or Subconsultant by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. This insurance may be issued on a claims-made policy form and shall be maintained for no less than three (3) years after issuance by the OWNER of the Notice of Physical Completion. The policy, at the sole expense of the CONSTRUCTION MANAGER or Subconsultant, shall have extended Discovery Clause coverage of at least three (3) years after issuance by the OWNER of the Notice of Physical Completion if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.
- B. General Insurance Requirements
- (i) Unless otherwise required, each insurance policy except the CONSTRUCTION MANAGER's professional liability policy:
 - (a) shall be issued by an insurance company licensed to do business in the State of New York by the New York State Department of Financial Services and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER in its sole and exclusive discretion;

- (b) shall be maintained until the OWNER issues the Notice of Physical Completion of the Project or terminates this Contract for Construction Management Services, except where this Contract for Construction Management Services requires an insurance policy to be maintained for a period beyond issuance of the Notice of Physical Completion or termination of this Contract for Construction Management Services in which case such insurance policy shall be maintained in force for the specified period beyond issuance of the Notice of Physical Completion or termination of this Contract for Construction Management Services;
 - (c) shall be written on an occurrence basis except where this Contract for Construction Management Services explicitly allows otherwise; and,
 - (d) shall be evidenced by a certificate of insurance acceptable to the OWNER which provides that the coverage evidenced thereby shall not be a reduction in the limits of liability or canceled without thirty (30) days' prior written notice to the OWNER.
- (ii) Should the CONSTRUCTION MANAGER fail to provide or maintain any insurance required by this Contract For Construction Management Services, the OWNER may, after providing written notice to the CONSTRUCTION MANAGER, purchase insurance covering the CONSTRUCTION MANAGER and charge back such purchase to the CONSTRUCTION MANAGER.
 - (iii) At any time that the coverage provisions and limits on the policies required do not meet the provisions and limits set forth therein, The CONSTRUCTION MANAGER shall immediately cease work on the Project. The CONSTRUCTION MANAGER shall not resume work on the Project until authorized to do so by the OWNER. Any delay or time lost as a result of the CONSTRUCTION MANAGER not having insurance required by this Contract for Construction Management Services shall not give rise to a delay claim or any other claim against the OWNER or the Client
 - (iv) The CONSTRUCTION MANAGER shall secure, pay for and maintain Property Insurance coverage for the protection against the loss of owned, borrowed or rented equipment and tools, including any tools owned by employees, and any tools or equipment owned, borrowed or rented by the CONSTRUCTION MANAGER. The requirement to secure and maintain such insurance coverage is solely for the benefit of the CONSTRUCTION MANAGER. Failure of the CONSTRUCTION MANAGER to secure such insurance or to maintain an adequate level of coverage shall not render the Additional Insureds, or their agents and employees responsible for any losses, and the Additional Insureds, their agents and employees shall have no such liability.
 - (v) Neither the procurement nor the maintenance of any type of insurance by the OWNER and the CONSTRUCTION MANAGER shall in any way be construed or be deemed to limit, discharge, waive or release the CONSTRUCTION MANAGER from any of the obligations and risks accepted by the CONSTRUCTION MANAGER or to be a limitation on the nature or extent of said obligations and risks.
 - (vi) The same conditions as are applicable to the CONSTRUCTION MANAGER under these insurance requirements shall be applicable to the CONSTRUCTION MANAGER's Subconsultants. However, the CONSTRUCTION MANAGER shall keep the Subconsultant Certificates of Insurance on file and produce them upon the demand of the OWNER.
 - (vii) The CONSTRUCTION MANAGER and its Subconsultants shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and the insurance companies issuing such policies. The CONSTRUCTION MANAGER shall take every precaution against injuries to persons or damage to property. The CONSTRUCTION MANAGER shall establish and maintain safety procedures

in connection with its work as required by the current New York State Labor Law and regulations of the Occupational Safety and Health Administration as applicable.

- (viii) Notwithstanding any other provision of this Article, the OWNER may require the CONSTRUCTION MANAGER to provide, at the expense of the OWNER, any other form or limit of insurance necessary to secure the interests of the OWNER.

C. Certificates Of Insurance

Certificates of Insurance must be submitted by the CONSTRUCTION MANAGER and approved by the OWNER prior to the commencement of the Work. Certificates of Insurance shall provide for thirty (30) days written notice to the OWNER prior to the cancellation, non-renewal, change in deductible or self-insured retention requirements, or a reduction of benefits of any policy. Submission of the Certificates of Insurance constitutes a warranty by the CONSTRUCTION MANAGER that the insurance coverage described is in effect for the policy term shown. Upon the request of the OWNER, the CONSTRUCTION MANAGER shall furnish the OWNER with certified copies of each policy.

D. Effect Of Insurance

Compliance with insurance requirements shall not relieve the CONSTRUCTION MANAGER of any responsibility to indemnify the OWNER for any liability to the OWNER as specified in any other provision of this Contract for Construction Management services and the OWNER shall be entitled to pursue any remedy in law or equity if the CONSTRUCTION MANAGER fails to comply with the contractual provisions of this Contract for Pre-Construction Services. Indemnity obligations specified elsewhere in this Contract for Pre-Construction Services shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

E. Priority

Insurance coverage (including any deductible or self-insured retention) required from persons or entities other than the OWNER or the OWNER's Related Parties shall be deemed primary to any coverage provided by the OWNER or the OWNER's Related Parties.

F. Property Damage Disclaimer

The OWNER shall not be liable, and shall provide no insurance, for any loss or damage incurred by the CONSTRUCTION MANAGER or its Subconsultants, or by their agents and employees, to tools, machinery, equipment and other property owned by them, regardless of whether such losses are insured by them. The CONSTRUCTION MANAGER hereby releases and discharges the OWNER and its Related Parties of and from all liability to the CONSTRUCTION MANAGER, and to anyone claiming by, through or under the CONSTRUCTION MANAGER, by subrogation or otherwise, on account of any loss or damage to such tools, machinery, equipment or other property, however caused.

ARTICLE XI: INSURANCE PROVIDED BY THE OWNER

A. The OWNER shall, except as otherwise specified, at all times during the period of construction and until physical completion and acceptance, procure and maintain, at the cost and expense of the OWNER, "All Risk" Builders Risk Insurance. The CONSTRUCTION MANAGER, Contractors and Subcontractors will be covered for their work. Losses up to and including \$5,000 shall be borne by the CONSTRUCTION MANAGER, PRIME CONTRACTORS and/or its Subcontractors. 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.

B. Coverage shall include the interest of contractors and subcontractors in insured property during the course of construction at an insured location or within 1,000 feet thereof, to the extent of the Owner's legal liability for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work.

ARTICLE XI. INSURANCE PROVIDED BY PRIME CONTRACTORS

The OWNER shall include in the contracts between the OWNER and each of the separate Prime Contractors the following requirements:

1. The CONSTRUCTION MANAGER is specifically named as an indemnitee in the Indemnification and Hold Harmless furnished by each of the Prime Contractors to the OWNER.
2. That the CONSTRUCTION MANAGER be specifically included as an Additional Insured in all liability insurances furnished by each of the Prime Contractors to the OWNER.
3. Insurance provided by the Prime Contractors is required to be endorsed as primary with respect to the coverage afforded to the additional insureds.
4. It shall be the responsibility of the CONSTRUCTION MANAGER to obtain a copy of each Prime Contractors Certificate of Insurance, in order to ensure that the CONSTRUCTION MANAGER is included as an Additional Insured thereunder.

ARTICLE XII. PROTECTION OF RIGHTS, PERSONS, AND PROPERTY

A. Accident Prevention

The CONSTRUCTION MANAGER shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the Work on the Job Site. The CONSTRUCTION MANAGER shall establish and maintain, at all times, safety procedures in connection with the Work as required by the current New York Labor Law and regulations of the Occupational Safety and Health Act (OSHA).

B. Risks Assumed by the CONSTRUCTION MANAGER

1. The CONSTRUCTION MANAGER solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the Work, and whether said risks involve any legal duty, primary or otherwise, imposed upon the OWNER or the Client, excepting only risks which arise from faulty designs as shown by the plans and specifications or from the negligence of the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, (hereinafter Protected Persons), that caused the loss, damage, or injuries hereinafter set forth:

- a. the risk of loss or damage to the Work or to any plant, equipment, tools, materials, or property furnished, used, installed, or received by the Protected Persons. The CONSTRUCTION MANAGER shall bear said risk of loss or damage until the Work is completed or until completion or removal of said plant, equipment, tools, materials or property from the site and the vicinity thereof, whichever event occurs last, and in the event of said loss or damage, the CONSTRUCTION MANAGER shall timely repair, replace or make good any said loss or damage after notification to the OWNER's representative and Risk Management Unit, and;

- b. the risk of claims, just or unjust, by third persons against the Protected Persons on account of wrongful death, bodily injuries, and property damage, arising or alleged to arise out of, or as a result of, or in connection with the performance by the CONSTRUCTION MANAGER of the Work. The CONSTRUCTION MANAGER shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained prior to the Final Acceptance of the Work, or resulting from the CONSTRUCTION MANAGER's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the OWNER, and;
- c. the CONSTRUCTION MANAGER assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the CONSTRUCTION MANAGER or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the negligent or alleged negligent execution of the work. The CONSTRUCTION MANAGER shall assume the defense and pay on behalf of the Protected Persons, any and all loss, expense, damage, or injury that the Protected Persons may sustain as the result of any claim, provided however, the CONSTRUCTION MANAGER shall not be obligated to indemnify the Protected Persons for their own negligence, if any. The CONSTRUCTION MANAGER agrees to assume, and pay on behalf of the Protected Persons, the defense of any action at law or equity which may be brought against the Protected Persons. The assumption of defense and liability by the CONSTRUCTION MANAGER includes, but is not limited to: the amount of any legal fees associated with fending, all costs of investigation, expert evaluation, and any other costs including any judgment or interest or penalty that may be entered against the Protected Persons, in any said action.
2. The CONSTRUCTION MANAGER's obligations under this Article shall not be deemed waived, limited, or discharged by the enumeration of procurement of any insurance for liability for damages.
3. Neither Final Acceptance of the Work nor making any payment shall release the CONSTRUCTION MANAGER from the CONSTRUCTION MANAGER's obligations under this Article. The enumeration elsewhere in the Contract of particular risks assumed by the CONSTRUCTION MANAGER or of particular claims for which the CONSTRUCTION MANAGER is responsible shall not be deemed to limit the effect of the provisions of this Article or to imply that the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER of particular claims for which the CONSTRUCTION MANAGER is responsible shall be deemed to limit the risks which the CONSTRUCTION MANAGER would assume or the claims for which the CONSTRUCTION MANAGER would be responsible in the absence of said enumerations.

C. Protection of Lives and Health

1. The CONSTRUCTION MANAGER shall identify any unique feature or aspect of the Project which could lead to personal injury or property damage during the course of demolition and/or construction of the Project. These features or aspects shall be fully described, and a separate portion of any design, plan, or specification developed by the CONSTRUCTION MANAGER shall include a description of the feature or aspect which creates the threat of bodily injury or property damage. The same section of any design, plan, or specification shall set out which building trade or Contractor will be responsible for establishing procedures, including warnings and safety devices, related to the potential bodily injury or property damage causing features or aspects of the Project.

ARTICLE XIII: HOLD HARMLESS

In addition to any risks specifically assumed by the CONSTRUCTION MANAGER under Article XIII, the CONSTRUCTION MANAGER hereby agrees to indemnify and hold harmless the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CONSTRUCTION MANAGER, and shall pay any judgment or expense, including interest, imposed against any of them for injury, wrongful death or property damage, and to defend and pay the costs and expenses thereof, any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein.

Upon the conclusion of any such 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 money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CONSTRUCTION MANAGER the percentage of defense costs which the CONSTRUCTION MANAGER incurred based upon an apportionment of the OWNER's allocated responsibility.

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

The CONSTRUCTION MANAGER shall maintain and shall keep for a period of six (6) years after the date of Final Acceptance, all records and other data relating to the Project, including records of consultants and subconsultants. The OWNER or the OWNER's representative shall have the right to inspect and audit all records and other data of the CONSTRUCTION MANAGER and its consultants and subconsultants relating to the Project. Any item not supported due to the unavailability of said records shall, at the discretion of the OWNER, be disallowed. If payment has already been made, amounts disallowed shall be refunded by the CONSTRUCTION MANAGER to the OWNER upon demand.

ARTICLE XV: ASSIGNMENT

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

ARTICLE XVI: APPENDIX "E" ADDITIONAL ITEMS

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

SIGNATURES

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

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

By _____

Title _____

Date _____

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

Firm
Address City, State Zip

By _____ 1

Title _____

Date _____

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

OWNER'S ACKNOWLEDGEMENT

ACKNOWLEDGMENT OF DASNY OFFICER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the _____ day of _____ in the year 20 ____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____, that he/she is the _____ for the Dormitory Authority of the State of New York, 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 said corporation.

Notary Public

CONSTRUCTION MANAGER's ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF CONSTRUCTION MANAGER EXECUTING CONTRACT, IF A CORPORATION

STATE OF _____)
COUNTY OF _____) ss:

On the _____ day of _____ in the year 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) at _____, (include street and street number, if any); that he/she/they is (are) the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the Board of Directors of said corporation.

Notary Public

CONSTRUCTION MANAGER's ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF CONSTRUCTION MANAGER EXECUTING CONTRACT, IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF _____)
COUNTY OF _____) ss:

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

Notary Public

APPENDIX “A”

SCOPE OF SERVICES

INTRODUCTION

The OWNER intends to perform construction and rehabilitation work at various sites in the state of New York as described in the Request for Proposal (RFP) and incorporated herein by reference.

The OWNER may request the CONSTRUCTION MANAGER to provide services on either a full service basis, the scope of which is defined herein under Design Phase and Construction Phase, or on a limited basis using only particular services of the CONSTRUCTION MANAGER, herein referred to as Technical Services. Technical services may be provided during the Design or Construction Phase of a particular project and shall be provided by one or more of the CONSTRUCTION MANAGER’s staff under the direction and supervision of the OWNER’s representative. The full range of services required under the Design and Construction Phases shall not apply to work performed as Technical Services.

The following shall serve as a directory for the scope and nature of Design and Construction Services to be provided by the CONSTRUCTION MANAGER in order to meet the objectives of the OWNER.

A. TECHNICAL SERVICES

Technical Services include, but are not limited to:

- a. field inspections;
- b. cost estimating;
- c. scheduling;
- d. constructability review;
- e. design review;
- f. value engineering;
- g. review contractor progress payments;
- h. attend meetings as may be required;
- i. administrative/office support; and
- j. other technical support services, as directed by OWNER and enumerated in the Work Authorization.

The specific scope of activities for any of these requested services shall be further described in each Work Authorization issued.

B. DESIGN PHASE

The CONSTRUCTION MANAGER shall:

1. visit the site as may be required by the OWNER
2. attend all meetings concerned with the Project and prepare meeting minutes as may be required by the OWNER in writing;
3. review the design drawings prepared by the Design Professional and check the Contract Documents for coordination among the drawings, between the drawings and specifications, and between specifications and General Conditions, as may be required by the OWNER;

4. perform a detailed review of the Contract documents at each design phase submission including final bid set review, and provide copies of the marked up set of Contract documents and the accompanying recommendations to the OWNER.
5. prepare a cost estimate of the Project at the following design milestones in such form and detail as may be required by the OWNER:
 - a. Schematic Design Phase– 30% Submission
Upon completion by the Design Professional of the Schematic Services – 30% submission, provide a cost estimate based upon measurement of physical characteristics.
 - b. Design Development Phase – 60% Submission
Upon completion of the Design Development Document Phase by the Design Professional, provide a cost estimate based upon a detailed take-off of labor, materials and equipment.
 - c. Construction Documents Phase – 100% Submission
Upon completion of 100% Construction Documents by the Design Professional, the CM shall provide a final cost estimate based upon a detailed take-off of labor, materials and equipment.

Upon completion of final cost estimate for each phase of design, the CONSTRUCTION MANAGER will schedule a meeting with the OWNER, Client, and Consultants to reconcile this estimate. In the event of discrepancies in the cost estimate, additional meetings will be scheduled as required to resolve these discrepancies.

6. Value Engineering

Provide value engineering services and offer cost savings suggestions and best value recommendations to the OWNER, as may be required. Provide a written report summarizing issues and providing recommendations to resolve the issues at each design phase

7. Constructability Review:

The Construction Manager shall review the design for constructability and identify any issues. Provide a written report summarizing issues and providing recommendations to resolve the issues at each design phase.

8. Design Phase Scheduling:

If requested the CONSTRUCTION MANAGER shall provide Design Phase Scheduling Services in accordance with the following requirements:

Evaluate Scheduling Requirements: Evaluate the Construction Phase Schedule for conformance with industry standards, reasonableness of overall proposed schedule duration and methodology. Prepare an expanded schedule for the Construction Phase of the Project using a Critical Path Method (CPM) schedule based on the OWNER's scheduling template supporting (via scheduling roll up logic) major milestone activities unique to each proposed Contract. Provide recommendations and possible alternative solutions, which at minimum addresses:

Available labor resources.

- Construction sequence, logical progression of the work.
- Critical path.
- Division of work.

Major milestones to include at a minimum:

- Notice to proceed.
- Phasing.
- Procurement and delivery of long lead items.
- Substantial completion.
- Occupancy, if applicable.
- Final completion.

Note: Only the major milestones are to be included in the bid documents.

9. Bid Phase

The CM shall assist the owner in the following tasks, including but not limited to: responses to bid phase Requests for Information (RFI's), vetting bidder qualifications, performing reference checks, preparing bid tabulations, etc.

C. CONSTRUCTION PHASE

The CONSTRUCTION MANAGER shall perform the following services in relation to:

1. General Administration

- a. Serve as the OWNER's representative in the field during the construction phase of the project managing all aspects of project. The CONSTRUCTION MANAGER shall be responsible for schedule, quality and budget throughout the duration of this phase.
- b. Establish a project team by which the Project will be controlled, coordinated, and expedited. On-site staffing shall be agreed upon by the OWNER and CONSTRUCTION MANAGER and in accordance with Appendix "B," which is annexed hereto and made a part hereof.
- c. Receive, investigate, and reply to all Contractors' correspondence pertaining to the Work. Take appropriate action as required.
- d. Prepare, develop, maintain, and safeguard all inclusive on-site record keeping systems that meet with the OWNER's approval.
- e. Coordinate with the appropriate parties the delivery and installation of OWNER purchased furnishings and equipment.
- f. Supply the OWNER and the OWNER's Representative (if requested) with a copy of all correspondence, reports, comments, transmittals, requests, and other information relating to the Contract.

2. Meetings

- a. Chair all project meetings as required and issue written minutes within four (4) calendar days.

- b. Attend and record miscellaneous meetings with the OWNER, Design Professional, and/or Contractor(s).

3. **Scheduling**

The CONSTRUCTION MANAGER shall provide Construction Phase Scheduling Services in accordance with the following requirements:

- a. Preparation and Review of Schedule

- 1) Initial Conferences

Conduct conferences with prime contractors and the OWNER's representatives during the mobilization stage to determine sequential relationships and interdependence for each activity of the Project utilizing the OWNER's schedule template. Additional information to be developed in order to establish a practical work schedule includes:

- (a) An analysis of the various essential components, activities, and events required for a completed Project.
 - (b) Activities shall not be limited to actual construction operations but shall include permitting, preparation and submission of shop drawings and samples, procurement of materials and equipment, manufacturing lead time, testing and commissioning, closeout, and consultant and OWNER activities that may affect work progress.
 - (c) Such other information as may be required to prepare a complete plan and work schedule under the proposed scheduling method.

- 2) Detailed Coordinated Working Schedule for Construction Completion

- (a) Prepare for submittal and approval a preliminary CPM schedule for the Project including activities for deliveries and submittals. This network shall show, in detail, the entire Project schedule and shall include summary activities of all contracts.
 - (b) Based on the Contractor's, Architect's, and OWNER's schedule information. The durations and manpower information should be analyzed and reviewed with the Contractors in order to develop a complete network. The network presentation shall include time scale logic.
 - (c) The Detailed Coordinated Working Schedule for all work shall be submitted to the OWNER for approval and shall be furnished no later than thirty working days after the Notice to Proceed is issued.

- 4) Progress Update

- (a) The Detailed Coordinated Working Schedule shall be updated monthly or as determined by the Project Manager requires.
 - (b) The reports shall be issued after each update.

5) Reports

Concurrent with the Project schedule, submit each of the following reports. Format for each activity in reports shall contain; activity ID number, activity description, activity percent complete, original duration, remaining duration, early start and finish dates, and total float.

- (a) Activity Report: List of all activities sorted by early or actual start date in each phase, area and level following the physical divisions of the Work.
- (b) Ninety Day Look Ahead: Lists all activities occurring from the update data date in a three month forward and one month back window
- (c) Logic Report: List of preceding and succeeding activities for all activities, sorted in ascending order by early or actual start date. Include activity ID number and float path(s).
- (d) Total Float Report: Provide a cumulative list of total float from each update period with comments associated to any and all variances.
- (e) Variance Report: Comparison of current update against the approved detailed coordinated working schedule.
- (f) Procurement Report: List all procurement activities sorted in order of the item being procured.
- (g) Narrative Report: The project scheduler shall provide a narrative with each schedule update which shall include the following information:

Narrative Report: The project scheduler shall provide a narrative with each schedule update which shall include the following information.

- Introduction.
- An executive summary of the schedule narrative.
- A brief description of the project.
- Anticipated award dates, actual award dates, contractors selected and any recommendations for changes to the bid strategy going forward.
- Base Line Acceptance.
- Actual and anticipated acceptance dates of Baseline Schedule for each prime contractor and any associated issues.
- Major Milestone Summary.

A graphical presentation of project milestone progress, columns to include:

Activity ID	Activity Description	Current Update Completion Date	Last Update Completion Date	Original Baseline Completion Date	Variance from Prior Update (Days)	Cumulative Variation from Original Baseline (Days)
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Discussion of Issues as appropriate to include the following:

- Major issues encountered during the current and prior updates.
- Summary of Progress/Current Status of Project.
- Progress since prior update and any issues encountered.
- Changes to Network Logic.
- Explanation of any changes to the network logic.

- Critical Path.
- Description of current critical path to completion, variance from baseline critical path and variance from the critical path associated with the prior update.
- Delay Analysis and Responsibility.
- Discussion of any and all delays that have been experienced since the prior update as well as an assessment of responsibility for each delay. This section should also include a matrix presenting the delay associated with each schedule update and the cumulative project delay.
- Planned Activities.
- Activities and progress planned for the next update period.
- Potential Recovery Measures and Associated Cost Impacts.
- Recommendations for recovery of lost time and or acceleration/re-sequencing strategies. Associated cost impacts estimates presented on an order of magnitude basis.

4. Shop Drawings and Samples

- a. Manage the shop drawing and submittal phase of the project to insure compliance with timeframes included in the Contract Documents and the Project Schedule.
- b. Review all shop drawings for coordination of field conditions among the Prime Contractors, Subcontractors, trades, etc., prior to submittal to the Architect for his review and approval. Return shop drawings, as necessary, for corrections.
- c. Receive and review all samples and forward to the design professional for approval.
- d. Maintain a shop drawing and submittal log indicating date received from contractor, date of CM review, date submitted to design professional and date of approval by the design professional for each item.

5. Testing/Inspection

- a. Manage all testing and inspection programs for the project.
- b. Comply with the requirements of the OWNER's independent safety inspection program. Oversee scheduled and unannounced inspections and provide information to the independent safety inspectors as requested.
- c. Monthly, provide the OWNER with a schedule of inspections to be performed during the coming month, including the scheduled date, type of test or inspection and test/inspection criteria or standards. Issue reports that include date, persons present and test/inspection criteria or standards.

6. Quality Control

- a. Manage the RFI (Request for Information) process. Maintain an RFI log indicating date received and date resolved for each item.
- b. Assure that all required clarifications and revisions to Contract Documents are issued to the appropriate Contractor in a timeframe which does not impact the progression of work.
- c. Inspect all work daily for quality and conformance to the Contract Documents. Advise Contractor(s) in writing on a weekly basis of necessary corrective work.

- d. Inspect all materials and equipment for conformance with the Contract Documents and approved submittals prior to installation of the work.
- e. Inspect the Project jointly with the OWNER and Architect prior to the time the OWNER is to use, occupy, or operate any part, or all of the Project, and prepare a list of observed variances and deficiencies in the Work. Distribute the list to the appropriate Contractor(s) for necessary corrective work.
- f. Prepare jointly with Architect a "Final Punch List" for each Contract. Distribute to the appropriate Contractor(s) for necessary corrective action. Manage the corrective work to insure compliance with the Contract Documents and Project Schedule.
- g. At the time of substantial completion, prepare a list of any remaining items of work to be completed or corrected. Distribute to the appropriate Contractor(s) for necessary work. Establish a value for each item of work remaining to be completed or corrected. Manage the corrective work to insure compliance with the Contract Documents and Project Schedule.
- h. Make final inspection of the Project with OWNER/design professional, using Contract Documents as a base to determine if the Contract requirements have been fulfilled. List any variances between Contract requirements and Work installed. Coordinate items which may appear on independent final lists prepared by the OWNER/design professional. Distribute to the appropriate Contractor(s) for necessary corrective action. Manage the corrective work to insure compliance with the Contract Documents and the Project Schedule.
- i. Prepare periodic "Exception Reports" as required by the work of the Contractors. Distribute to the appropriate Contractor(s) for necessary corrective work. Maintain a log of the noted exception date issued, and date corrected. Maintain a photographic record where life safety issues/systems are involved.
- j. Follow-up on all notices of corrective work to Contractor(s) to assure satisfactory and timely completion of the work.
- k. Assist in the implementation of the OWNER's Affirmative Action Program with regard to Equal Opportunities and Minority Business Enterprise participation.

7. Progressing the Work

- a. Expedite and coordinate the work of all Contractors.
- b. Expedite and coordinate the progress of Architects and other consultants.
- c. Determine the cause of and responsibility for any delays. Recommend and implement appropriate remedial action.
- d. Be cognizant of potential delays and direct the Contractor(s) to take the necessary measures to eliminate circumstances which may lead to a delay.
- e. Maintain weekly project progress photographs displaying progression of work, quality issues, field conditions, etc.

8. Payments to Contractors

- a. Progress Payments:
 - 1) Review and recommend for the OWNER's approval, the Contractor's detailed payment breakdown.
 - 2) Review each Contractor's monthly invoices to insure compliance with the OWNER's procedure and recommend payment, no payment, or partial payment.
- b. Final Payment:
 - 1) Establish that all close-out procedures have been complied with.
 - 2) Make recommendations on final payment.

9. Change in the Work

- a. Manage and enforce the OWNER's procedure for the processing of Change Orders.
- b. Consult with the Architect concerning proposed design changes and obtain the OWNER's approval for same. The Architect will be responsible to design approved changes.
- c. Make recommendations to the OWNER for such changes in the Work as the CONSTRUCTION MANAGER may consider necessary or desirable.
- d. Perform economic evaluation of all changes in the Work and evaluate the effect on other work and the Project Schedule. Investigate alternatives, coordinate with the Architect, and make recommendations to the OWNER.
- e. Evaluate requests for extensions of time and make written recommendations within 14 calendar days of receipt of request.
- f. Maintain daily cost accounting records with respect to work performed on a time and materials basis.
- g. Prepare, approve and submit to the OWNER all change order packages within fourteen (14) calendar days of the date the need for the work was identified.

10. Claims

Analyze and evaluate all claims for Contract time extension or cost adjustment. Make written recommendations to the OWNER for resolution, approval, or disapproval within 30 days of receipt of claim.

11. Reports

Prepare and issue the following:

- a. daily reports in form acceptable to the OWNER;
- b. all reports required by Federal authorities;
- c. Affirmative Action and EEO reports;
- d. for any job related injury prepare/obtain same day photographs, C-2 Form (employers first report of injury), OSHA Log of Illness and Injury, the CONSTRUCTION MANAGER's

daily log, and any other incident/accident reports, and immediately forward to the OWNER's Risk Management Unit;

e. for any job related property damage prepare/obtain same day photographs, the CONSTRUCTION MANAGER's daily log, and any other incident/accident reports, and immediately forward to the OWNER's Risk Management Unit;

f. a Monthly Management Report in a format provided by the OWNER; and

g. other reports which are from time to time required by the OWNER.

12. Close Out

a. Establish that the following has been received from the Contractor(s) and forwarded expeditiously to the appropriate party:

- 1) all necessary guarantees;
- 2) as-built drawings;
- 3) operating and maintenance manuals;
- 4) certificates of compliance, etc.;
- 5) all turnover items required by Contract; and
- 6) other items required by the Contract.

b. Maintain a log of receipts and turnovers, and transmittals.

c. Establish and document that all operating instructions and training have been given to the OWNER's personnel consistent with Contract requirements. Perform all necessary coordination.

13. Project Management System

a. For projects with an Approved Construction Budget greater than five million and 00/100 Dollars (\$5,000,000.00), or as directed by the OWNER, the Construction Manager shall provide all project scheduling deliverables from the current versions of Primavera P6 or other software acceptable to the OWNER. The OWNER will provide the Construction Manager with templates to be used in the generation of the project schedule(s). In addition, the Construction Manager shall use the current version of the Project Management System in accordance with the OWNER's protocol to manage all project related correspondence, transmittals, meeting minutes, requests for information, deliverables, daily logs, project costs, change management and reporting.

b. The OWNER may direct the Construction Manager to provide all the Project Management System functions of Paragraph A of this Article from available web-based and/or Application Service Provider (ASP) system(s) as selected by the OWNER.

14. Site Security

The Construction Manager shall maintain a site security system to be specified and procured by the OWNER. The administration of this system shall be by the Construction Manager's own personnel unless otherwise approved by the OWNER. The Construction Manager shall be responsible for the administration of this system, which may include but not be limited to:

- 1) Maintenance of hardware and software.
- 2) Generating photographic or other approved identifications.
- 3) Assigning identification cards to contractor staff and other site personnel.
- 4) Ensuring contractor staff and other site personnel comply with security procedures.

- 5) Maintaining security of the system against unauthorized access.
- 6) Managing other data entry and generation of reports as requested by the OWNER.

15. Closed-Circuit Television

The Construction Manager shall monitor the installation of closed-circuit television (CCTV) cameras and other security measures such as layered access for the safety and security of public housing residents.

D. GENERAL CONDITIONS

Only for General Conditions Work performed by Construction Manager.

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1. Contract and Contract Documents

The plans, specifications, and addenda prepared for the General Conditions Work Phase, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines, and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light on the interpretation of the provisions to which they refer. In case of any conflict or inconsistency between the provisions of the signed portion of this Contract and those of the specifications, the provisions of this signed portion of the Contract shall govern.

2. Definitions

The following terms as used in this Contract are defined as follows:

a. Work:

The term "Work" as used herein, refers to the General Conditions Work Items enumerated in this Contract and is that normally done at the location of the Project, and includes the performance of all labor and the furnishing of all plant, materials, supplies, equipment, and other facilities and things necessary or proper for or incidental to the carrying out and completion of this Contract. The term "Work Performed" shall be construed to include the delivery of material to and suitably storing it at the site of the Project.

b. Extra Work:

The term "Extra Work" as used herein refers to and includes Work required by the OWNER, which in the judgment of the OWNER involves changes in or additions to that required by the plans, specifications, and addenda in their present form.

c. Construction Manager:

A person, persons, firm, partnership, or corporation with whom this Contract is made by the OWNER.

d. Contract:

The term "Contract" as used herein shall be deemed to mean only the portions of this Contract applicable to the General Conditions Work Phase of this Contract.

e. Directed: Required: Approved: Acceptable:

Whenever they refer to Work or its performance, "directed," "required," "permitted," "ordered," "designated," "prescribed," and words of like import, shall imply the direction, requirements, permission, order, designation, or prescription of the OWNER; and "approved," "acceptable," "satisfactory," "in the judgment of," and words of like import, shall mean approved by or acceptable to or satisfactory to or in the judgment of the OWNER.

3. Materials, Services, and Facilities

It is understood that, except as otherwise specifically stated in the Contract Documents the CONSTRUCTION MANAGER shall provide and pay for all materials, labor, tools, equipment, water, light, power, heat, and transportation, superintendent, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

4. Construction Manager's Title to Materials

No materials or supplies for the Work shall be purchased by the CONSTRUCTION MANAGER or by its Subcontractors subject to any chattel mortgage or under a conditional sale or other Contract by which an interest is retained by any other party. The CONSTRUCTION MANAGER warrants that he has good title to all materials and supplies used by him in the Work, or re-sold to the OWNER pursuant to this Contract, free from all liens, claims, and encumbrances.

5. Inspection and Testing of Materials

All materials and equipment used in the Work shall be subject to adequate inspection and testing in accordance with the accepted standards. The laboratory or inspection agency shall be selected by the OWNER. The OWNER will pay for all laboratory inspection service direct and not as part of this Contract.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

6. "Or Equal" Clause

Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., said identification is intended to establish a standard. Any material, article, or equipment of other manufacturers and vendors which will perform satisfactorily the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the OWNER, of equal quality, substance, and function. It shall not be purchased or installed by the CONSTRUCTION MANAGER without the written approval of the OWNER.

7. Patents

The CONSTRUCTION MANAGER shall hold and save the OWNER's members, officers, employees, or representatives, harmless from liability of any nature or kind, including cost and expenses, for, or on account of any patented or unpatented inventions, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the OWNER, unless otherwise specifically stipulated in the Contract Documents.

License or Royalty Fees: License and/or royalty fees for the use of a process which is authorized by the OWNER of the Project must be reasonable, and paid to the holder of the patent, or his

authorized licenses, direct by the OWNER and not by or through the CONSTRUCTION MANAGER.

If the CONSTRUCTION MANAGER uses any design, device, or materials covered by letters, patent, or copyright, he shall provide for said use by suitable Contract with the owner of said patented or copyrighted design, device, or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of said design, device, or materials in any way involved in the Work. The CONSTRUCTION MANAGER and/or his sureties shall defend, indemnify, and save harmless the OWNER and the Client from any and all claims for infringement by reason of the use of said patented or copyrighted design, device, or materials or under this Contract, and shall indemnify the OWNER for any cost, expense, or damage which it may be obliged to pay by reason of said infringement at any time during the prosecution of the Work or after completion of the Work.

8. Surveys, Permits, and Regulations

Unless otherwise expressly provided for in the specifications, the OWNER will furnish to the CONSTRUCTION MANAGER all surveys necessary for the execution of the Work, but the CONSTRUCTION MANAGER shall lay out the Work.

The CONSTRUCTION MANAGER shall procure and pay for all permits and licenses necessary for the execution of his Work and the use of said Work when completed.

The CONSTRUCTION MANAGER shall comply with all the laws, ordinances, rules, orders, and regulations relating to the performance of the Work, and the protection of adjacent property.

9. Construction Manager's Obligations

The CONSTRUCTION MANAGER shall and will, in good workmanlike manner, furnish all supplies and materials, machinery, equipment, facilities, and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all Work required by this Contract within the provisions of this Contract and said specifications and in accordance with the plans and drawings of the Work covered by this Contract and any and all supplemental plans and drawings and in accordance with the direction of the OWNER as given from time to time during the progress of the Work.

He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required. He alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for damage which may result from their failure or their improper construction, maintenance, or operation. The CONSTRUCTION MANAGER shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of this Contract and specifications, and shall do, carry on, and complete the entire Work to the satisfaction of the OWNER.

10. Weather Conditions

In the event of temporary suspension of work or during inclement weather or whenever the OWNER shall direct, the CONSTRUCTION MANAGER will, and will cause its Subcontractors to protect carefully its and their work and material against damage or injury from the weather. If, in the opinion of the OWNER, any Work or material shall have been damaged or injured by reason of failure on the part of the CONSTRUCTION MANAGER or any of its Subcontractors so to protect his work, said materials shall be removed and replaced at the expense of the CONSTRUCTION MANAGER.

11. Inspection

The authorized representatives and agents of the OWNER shall be permitted to inspect all Work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

12. Reports, Records, and Data

The CONSTRUCTION MANAGER shall submit to the OWNER, and the CONSTRUCTION MANAGER shall require each of its Subcontractors to submit to the CONSTRUCTION MANAGER for submission to the OWNER, such schedules of quantities and costs, progress schedules, payroll, reports, estimates, records, and other data as the OWNER may request concerning work performed or to be performed under this Contract.

13. Time of Commencement and Completion of the Work

The Work shall be commenced at the time stated in the written order of the OWNER as the date of said commencement and shall be completed on the date specified in this Contract for completion.

It is hereby understood and mutually agreed, by and between the CONSTRUCTION MANAGER and the OWNER, that the date of beginning and the Time of Completion as specified in this Contract of the work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the work order.

The CONSTRUCTION MANAGER agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the CONSTRUCTION MANAGER and the OWNER, that the Time of Completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

14. Correction of Work

All Work, all materials, whether incorporated in the Work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the OWNER who 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 they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced, and/or corrected as the case may be, by the CONSTRUCTION MANAGER at his own expense. Rejected material shall immediately be removed from the site. Acceptance of material and workmanship by the OWNER's inspectors shall not relieve the CONSTRUCTION MANAGER from his obligation to supply other material and workmanship when so ordered by the OWNER.

15. Reduction of Wages and Salaries Caused by Governmental Action

- a. The CONSTRUCTION MANAGER shall submit to the OWNER upon its request all wages and salary rates for the various classes of construction employees used in computing his bid or offer submitted to the OWNER in connection with the Work and any other data and certifications that the OWNER deems necessary to comply with the requirements and objectives of any Federal or State of New York Economic Stabilization or similar program.
- b. The Work shall not be deemed completed for purposes of making final payment pursuant to the Contract Documents until (1) all said information, data, and certifications have been provided by the CONSTRUCTION MANAGER to the OWNER; and (2) the final contract price has been established in accord with said Federal and/or State Economic Stabilization program.
- c. The CONSTRUCTION MANAGER shall include these provisions in all subcontracts and shall require their inclusion in all subcontracts of any tier and all data required by the OWNER

pursuant to those provisions shall be provided to the OWNER by the CONSTRUCTION MANAGER.

16. OWNER'S Right to Withhold Certain Amounts and Make Application Thereof

The CONSTRUCTION MANAGER agrees that he will indemnify and save harmless the OWNER from all claims growing out of the lawful demands of the CONSTRUCTION MANAGER's Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The CONSTRUCTION MANAGER shall furnish satisfactory evidence that all obligations, of the nature herein above designated, have been paid, discharged, or waived. If the CONSTRUCTION MANAGER fails to do so, then the OWNER may, after having served written notice on the said CONSTRUCTION MANAGER, either pay unpaid bills, of which the OWNER has written notice, direct or withhold from the CONSTRUCTION MANAGER's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the CONSTRUCTION MANAGER shall be resumed in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONSTRUCTION MANAGER or its Surety. In paying any unpaid bills of the CONSTRUCTION MANAGER, the OWNER shall be deemed the Agent of the CONSTRUCTION MANAGER, and any payment so made by the OWNER shall be considered as a payment made under this Contract by the OWNER to the CONSTRUCTION MANAGER and the OWNER shall not be liable to the CONSTRUCTION MANAGER for any such payment made in good faith.

17. Mutual Responsibility of Contractors

If through acts of neglect on the part of the CONSTRUCTION MANAGER, any Contractor or Subcontractor suffers loss or damage, the CONSTRUCTION MANAGER agrees to settle with said Contractor or Subcontractor by Contract or arbitration, if such Contractor or Subcontractor will so settle. If any such Contractor or Subcontractor shall assert any claim against the OWNER on account of any damage alleged to have been sustained, the OWNER shall notify the CONSTRUCTION MANAGER, who shall indemnify and save harmless the OWNER against any such claim. The foregoing is limited to those obligations assumed by the CONSTRUCTION MANAGER under the General Conditions Work Phase of this Contract but shall not limit any liability under any other Phase of this Contract.

18. Subcontracts

The CONSTRUCTION MANAGER may utilize the services of specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty Subcontractors.

The CONSTRUCTION MANAGER shall not award any work to any Subcontractor without prior written approval of the OWNER, which approval will not be given until the CONSTRUCTION MANAGER submits to the OWNER a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the OWNER may require.

Where feasible, the CONSTRUCTION MANAGER shall solicit at least three competitive bids for any general conditions work item that exceeds \$50,000 in total cost. However, in carrying out the provisions of this paragraph, the CONSTRUCTION MANAGER may solicit competitive bids for certain work items only from certified minority or women owned businesses in order to comply with its approved Utilization Plan pursuant to Article 17 of Appendix F of this Contract.

The CONSTRUCTION MANAGER shall be as fully responsible to the OWNER for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The CONSTRUCTION MANAGER shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CONSTRUCTION MANAGER by the terms of this General Conditions Contract and other Contract Documents insofar as applicable to the work of Subcontractors and to give the CONSTRUCTION MANAGER the same power as

regards terminating any subcontract that the OWNER may exercise over the CONSTRUCTION MANAGER under any provisions of the Contract Documents.

The CONSTRUCTION MANAGER shall pay its Subcontractors the full amount due them from their proportionate share of each requisition for payment submitted by the CONSTRUCTION MANAGER and paid by the OWNER. The CONSTRUCTION MANAGER shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the OWNER.

The CONSTRUCTION MANAGER will insert in any subcontracts this Article, Article 24., entitled PROHIBITED INTERESTS, and Article 26., entitled USE OR OCCUPANCY OF BUILDING PRIOR TO ACCEPTANCE BY OWNER, contained herein and such other clauses as the OWNER may, by instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

19. Use of Premises and Removal of Debris

a. the CONSTRUCTION MANAGER on this Work expressly agrees to undertake the following:

- 1) every precaution against injuries to persons or damage to property;
- 2) storage of his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his work or the work of any other Contractor working on the site;
- 3) to place upon the Work or any part thereof only such loads as are consistent with the safety of the portion of the Work;
- 4) that before final payment he will remove all surplus materials, false work, temporary structures, including foundations thereof, plant of any description, and debris of every nature resulting from his operations, and to leave the Work in a neat, orderly condition suitable for use and occupancy;
- 5) at all times during the progress of the Work keep the building and the site free from accumulation of debris resulting from the Work. If the accumulation of waste matter and rubbish interfere with the Work of others or present a fire hazard, it shall be removed immediately; and
- 6) to confine his apparatus, materials, and operations of his workmen to limits prescribed by law or by contract limit lines except as the latter may be extended with the approval of the OWNER.

b. Burning of rubbish or waste material will not be permitted.

c. Removal of all waste and rubbish resulting from the Work shall be through chutes or lowered by hoists in receptacles.

20. Estimated Quantities

The estimated quantities of work to be completed and the materials to be furnished, under this Contract, as shown in any of the documents, are given only for the OWNER's use in comparing proposals and to indicate the approximate total amount of this Contract; and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the OWNER to complete the Work contemplated by this Contract, and said increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

21. Conflicting Conditions

Any provision in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of said conflict or inconsistency.

22. Notice and Service Thereof

Any notice to the CONSTRUCTION MANAGER from the OWNER relative to any part of the Contract shall be in writing and service considered complete when said notice is mailed to the CONSTRUCTION MANAGER at the last address given by the CONSTRUCTION MANAGER, or when delivered in person to said CONSTRUCTION MANAGER or the CONSTRUCTION MANAGER's authorized representative.

23. Withholding of Payments

The OWNER in its sole discretion may withhold from the CONSTRUCTION MANAGER so much of any approved payments due him as may in the judgment of the OWNER be necessary:

- a. to assure the payment of just claims due and unpaid of any persons supplying labor or materials for the Work specified in this Contract;
- b. to protect the OWNER from loss due to defective work specified in this Contract not remedied, or
- c. to protect the OWNER from loss due to injury to persons or damage to the work specified in this Contract or property of other Contractors, Subcontractors, or others caused by the act or neglect of the CONSTRUCTION MANAGER or any of his Subcontractors. 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 or to secure such protection. Said application of said money shall be deemed payments for the account of the CONSTRUCTION MANAGER.
- d. to assure payment of fines, liquidated damages and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to the provisions of this Contract; or
- e. to assure payment of fines and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to Article 17 - Affirmative Action in the Additional Items appendix, Section D.6, subdivision h. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

The provisions of this Article are solely for the benefit of the OWNER, and any action or non-action hereunder by the OWNER shall not give rise to any liability on the part of the OWNER.

24. Prohibited Interests

Officers and employees of the OWNER are bound by Sections 73, 73-a, and 74 of the 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.

25. Signs

There shall be erected, adjacent to the access road to the Project site, and/or at the Project, a sign or signs identifying the Project. The sign shall comply with the following sample drawing and shall contain the name of the Project, the Dormitory Authority - State of New York, the name of the Architect, the name of the CONSTRUCTION MANAGER, the name of the General Contractor, and other information as required by the OWNER.

26. Use or Occupancy of Building Prior to Acceptance by OWNER

If before the final completion of all work contemplated herein it shall be deemed necessary by the OWNER to take over, use, occupy, or operate any part of the completed or partly completed Work, the OWNER shall have the right to do so, and the Contractors shall not in any way interfere with or object to the use, occupation, or operation of said Work by the OWNER after receipt of notice in writing from the OWNER that said Work or part thereof will be used by the OWNER on and after the date specified in said notice.

27. Scope of Work

The CONSTRUCTION MANAGER will furnish all plant, labor, materials, supplies, equipment, and other facilities and things necessary or proper to or incidental to the work contemplated by this Contract, as required by and in strict accordance with the applicable plans, specifications, and addenda (hereinafter enumerated), prepared and in strict accordance with such changes as are ordered and approved pursuant to this Contract and will perform all other obligations imposed on him by this Contract.

28. Representations of CONSTRUCTION MANAGER

The CONSTRUCTION MANAGER represents and warrants:

- a. that he is financially solvent and that he is experienced in and competent to perform the type of work and to furnish the plant and materials, supplies, or equipment, to be so performed or furnished by him; and
- b. that he is familiar with all Federal, State, Municipal, and Department Laws, ordinances, orders, and regulations, which may in any way affect the Work of those employed therein, including, but not limited to, any special acts relating to the Work or the Project of which it is a part; and
- c. that the Work required by this Contract can be satisfactorily constructed and used for the purpose for which it is intended, and that said construction will not injure any person or damage any property; and
- d. that he has carefully examined the applicable plans and specifications, and addenda, if any, and site of the Work and that, from his own investigations he has satisfied himself as to the nature and location of the Work, the character, quality, and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, all other materials which may in any way affect the Work or its performance.

29. The OWNER's Right to do Work

If the CONSTRUCTION MANAGER should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, the OWNER, after three (3) days written notice to the CONSTRUCTION MANAGER may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then and thereafter due the CONSTRUCTION MANAGER.

30. Certificate of Completion

Upon completion of all work whatsoever required, the CONSTRUCTION MANAGER shall file a written certificate with the OWNER as to the entire amount of work performed and compensation earned by the CONSTRUCTION MANAGER including Extra Work and compensation thereof.

31. 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 has been discharged.

32. Access to Work

The OWNER and his representative shall at all times have access to the Work wherever it is in preparation or progress and the CONSTRUCTION MANAGER shall provide proper facilities for said access and so that the OWNER may perform his functions under the Contract Documents.

If the specifications, the OWNER's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the CONSTRUCTION MANAGER shall give the OWNER timely notice of its readiness for observation by the OWNER or inspection by another authority, and if the inspection is by another authority than the OWNER, of the date fixed for said inspection, required certificates of inspection being secured by the CONSTRUCTION MANAGER. If any work should be covered up without approval or consent of the OWNER it must, if required by the OWNER, be uncovered for examination at the CONSTRUCTION MANAGER's expense.

Re-examination of questioned work may be ordered by the OWNER and if so ordered that work must be uncovered by the CONSTRUCTION MANAGER. If said work be found in accordance with the Contract Documents, the OWNER shall pay the cost of re-examination and replacement. If said work be found not in accordance with the Contract Documents, the CONSTRUCTION MANAGER shall pay said cost.

33. Verifying Dimensions

The CONSTRUCTION MANAGER will be held responsible for the proper coordination of the fitting of the Work.

34. Name Plates

The CONSTRUCTION MANAGER shall not place name plates on the outside of any portion of his work, and he shall not permit Subcontractors or material men to stamp trademarks or names on the outside of any equipment. Name plates and trademarks normally placed on equipment by the manufacturers shall be allowed to remain, if approved by the OWNER.

35. Overloading

Materials, etc. shall not be stacked on or be carried over floor and roof construction that would stress any of its members beyond the designed live loads.

36. Temporary Toilet Facilities

The CONSTRUCTION MANAGER shall provide temporary exterior toilet accommodations, if not specifically provided for in the Contract Documents, for all persons employed or engaged on the Project.

Said temporary sanitary facilities shall be installed, maintained by this CONSTRUCTION MANAGER and shall meet all requirements of authorities having jurisdictions. At the completion of all work or at such earlier time as the OWNER may approve, he shall remove the temporary sanitary facilities.

The facilities shall be of the chemical type, at locations approved by the OWNER, screened from the public and maintained in a sanitary and approved condition at all times. If, upon approval or direction of the OWNER, a toilet room in the building is to be used as a temporary toilet by persons employed or engaged in the Project, it shall be used and maintained in a sanitary condition and the outside temporary toilet facilities and all evidence of its existence shall be removed. The CONSTRUCTION MANAGER shall provide installation and maintenance of said facility. If a toilet room within the building is used by employees, all plumbing fixtures and room finish shall, upon completion of the Work, be free from any damage, defacement, or other defects. Should it not be possible to satisfactorily repair any damages, defacement of fixtures, or interior finish, the CONSTRUCTION MANAGER shall replace said Work with new Work as required under this Contract.

The amount of sanitary facilities required shall be based on the total number of persons employed on the Project and be in accordance with the provision of the health and sanitary requirements of the authorities having jurisdictions.

37. Temporary Office

The CONSTRUCTION MANAGER, until all work covered by this Contract is accepted by the OWNER, shall provide a temporary office structure, or space, as determined by the OWNER, on the site at a location approved by the OWNER.

This structure/space shall be for the exclusive use of the CONSTRUCTION MANAGER, the Architect, and the OWNER. The CONSTRUCTION MANAGER shall bear the cost of constructing or furnishing said structure/space and maintain, keep clean, and at the completion of all work, remove said structure/space, repairing and refinishing the area as directed.

The structure/space shall be of such size and furnished and equipped with such facilities as hereinafter listed:

- a.
 - 1) (# of) plan table (3'- 0" x 10'-0");
 - 2) (# of) plan racks;
 - 3) (# of) office type desks with drawers and chairs which shall be suitable for use at the office desks;
 - 4) (# of) of metal, four drawer, letter size filing cabinets with lock.
- b. Conference table and chairs for job meetings. Size of table shall be 3' x 15'. Furnish (# of) folding chairs.

(Number and sizes of a. and b. shall be determined by the CONSTRUCTION MANAGER).

- c. Interior sanitary facilities, including a lavatory supplied with hot and cold water and a flush toilet. Toilet and sink shall be connected to an approved sewerage disposal system.
- d. A heating and air conditioning system with adequate fuel to maintain heating and cooling temperatures conforming to all applicable Federal regulations.
- e. An electrical lighting system.
- f. Install a telephone for the use of the Architects and pay all monthly local charges only.

The filing cabinet shall be new. Desks and chairs shall be in good repair and functional.

When adequate space is available in the building(s), the CONSTRUCTION MANAGER may transfer all the field office facilities to this space at his option and with the permission of the OWNER.

38. Temporary Light and Power

The CONSTRUCTION MANAGER shall, if not specifically provided for in the Contract Documents, process the necessary application to the lighting company.

39. Restoration of Roadways and Pavements

Roadways and pavements and curbs that are broken, damaged, settled, or otherwise defective, as a result of receiving, handling, or storage of materials or the performance of any work under this Contract shall be fully restored to the satisfaction of the Authorities having jurisdiction, at the full cost and expense of the CONSTRUCTION MANAGER, if not specifically provided for in the Contract Documents. The extent of the repairs and replacements shall be as determined by said Authorities.

40. Anti-Riot Provisions

The CONSTRUCTION MANAGER agrees that no part of the funds derived from this Contract shall be used to provide payments, assistance, or services, in any form, with respect to any individual convicted in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or

carrying on a riot, or 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 in the community concerned.

41. Accessibility

The CONSTRUCTION MANAGER shall install Work so as to be readily accessible for operation, maintenance, and repair.

42. Snow Removal

The CONSTRUCTION MANAGER will promptly remove snow from all walkways on the Project.

43. Quiet Operation

All the work of the CONSTRUCTION MANAGER shall operate under all conditions of load without any sound or vibration which is objectionable, in the opinion of the OWNER. In the case of moving machinery, any sound or vibration noticeable outside of the room, in which it is installed, or any annoyingly noticeable sound or vibration inside its own room, will be considered objectionable. Sound or vibration conditions considered objectionable shall be corrected in an approved manner by the CONSTRUCTION MANAGER at his expense.

44. Guards and Railings

Provide belt drives and rotating machinery with readily removable guards or railings. Guards: Heavy angle iron frames, hinged and latched, with heavy galvanized iron wire crimped mesh securely fastened to frames. Railing: 1-1/4" pipe and rail fittings.

45. Temporary Use of Equipment

No equipment intended for permanent installation shall be operated for temporary purposes without the written permission of the OWNER.

46. Tax Exemption

a. The OWNER is exempt from payment of Federal, State, local taxes, and 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 exemption does not apply to tools, machinery, equipment, or other property leased by or to the CONSTRUCTION MANAGER or its Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed Work, even though CONSTRUCTION MANAGER and its Subcontractors shall be responsible for and

pay any and all applicable sales and compensating use taxes, on said leased tools, machinery, equipment, or other property and upon all such unincorporated supplies and materials.

b. The CONSTRUCTION MANAGER and its 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.

47. Temporary Elevator Service for Workers

Where it is required by law the CONSTRUCTION MANAGER shall provide, if not specifically specified in the Contract Documents, temporary elevator service for workmen and all other persons engaged on the Project until the permanent elevators are placed in operation.

48. Temporary Roadways

The CONSTRUCTION MANAGER shall maintain, if not specifically specified in the Contract Documents, all temporary roads used for the Work of the Project keeping the surfaces of these roadways free from mounds, depressions, and obstructions of any kind including snow. He shall apply calcium chloride or other material as required to control dust.

The CONSTRUCTION MANAGER shall allow all persons engaged in the Project, including Architects, Engineers, OWNER, and materialmen and all Contractors employed on the Project free use of all temporary roads provided under this Contract.

49. Traffic Control

Access: Routes of ingress and egress on the grounds and within the Facility to the location of the Work shall be over routes as indicated on the drawings and as directed by the CONSTRUCTION MANAGER. Such access roadways shall remain open at all times unless closing is approved beforehand by the OWNER.

50. Pollution Control

a. The CONSTRUCTION MANAGER on the Project shall comply with the regulations of the Department of Environmental Conservation, with respect to its work, including but not limited to the following:

- 1) take all necessary precautions including, but not limited to, the digging and maintaining settling basins, dams, diverting streams, and all other actions that may be necessary to prevent silt and waste of any kind from being deposited, silting and reduction of quality of streams below the construction area, and downstream properties as a result of construction operations;
- 2) will not dispose of volatile fluid wastes (such as mineral spirits, oil, or paint thinner) or any other wastes which are prohibited by local ordinances, into storm or sanitary sewer systems or into streams or waterways; and
- 3) will not burn trash or waste matter on the site.

51. Fire Prevention Control

a. The CONSTRUCTION MANAGER shall provide at the site of the Project, at a location approved by the OWNER, a private unlisted telephone reserved for fire calls only, in the event

that a municipal fire alarm box is not located within 300' from the site of the Project. The phone must be in addition to regular business phones and a rule prohibiting its use for purposes other than alarm for fire or other emergencies must be strictly enforced. The phone itself should be colored red and be located at a point quickly available to all employees, including watchmen. Clear instructions for the sending of a fire alarm should be conspicuously posted by the phone and all personnel customarily at work ear near the phone shall be acquainted with the procedure. If such a phone is required, the CONSTRUCTION MANAGER must provide same from the time the OWNER notifies him to proceed until the time the OWNER accepts all the work covered by this Contract.

b. The CONSTRUCTION MANAGER shall take all precautions necessary and required to prevent fires and comply with all local, state, and federal laws governing fire safety.

APPENDIX "B"

SUMMARY OF PAYMENTS

A. MAXIMUM AMOUNT PAYABLE

Maximum Amount Payable for all Services required pursuant to the Contract shall be the total of all Projects listed on the below Summary of Payments form.

Date	Projects	Funding Source	Lump Sum (LS) or Not-to-Exceed (NTE)

Payments for Services shall be made monthly in proportion to Services performed and approved by the OWNER. Payments shall be requisitioned on the OWNER's form, **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION**, with accompanying backup. Only said form shall be used for reimbursement of Services.

APPENDIX “C”

APPROVED CLASSIFICATIONS AND RATES
CONTRACT NO. TBD

<u>Classifications</u>	<u>Maximum Direct Hourly Rates</u>
[insert classification]	\$ 0.00

The Multiplier for all direct hourly rates for Design Phase Services is [TBD].
The Multiplier for all direct hourly rates for Construction Phase Services is [TBD].
The Multiplier for all direct hourly rates for Technical Services is [TBD].

On January 1st of each year the CONSTRUCTION MANAGER and subconsultants, if applicable will be allowed a rate increase of two percent (2%) to the Maximum Direct Hourly rates. This increase shall not apply to the Principal/Executive level rates. A formal amendment to this contract is not required provided that the total contract amount does not increase.

The CONSTRUCTION MANAGER and subconsultant shall invoice based on the actual cost of salaries or wages paid directly to the technical employees and supportable by payroll and appropriate audits.

APPENDIX "D"

ADDITIONAL INSUREDS

The policy shall name the following additional insureds:

4201 Schools - The specific 4201 School

Beacon Institute for Rivers and Estuaries

City of Albany

City of Kingston

City of New York

City of New York Court Facilities

City University of New York (CUNY)

City University Construction Fund

The Construction Manager

Dormitory Authority of the State of New York

New York City Department of Environmental Protection

New York City Health and Hospitals Corporation (HHC)

New York City Housing Authority (NYCHA)

New York City Office of the County Medical Examiner (OCME), and the specific OCME facility

New York State Housing Trust Fund Corporation (HTFC)

New York State Department of Environmental Conservation (DEC)

New York State Department of Health (DOH)

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)

New York State Parks Recreation & Historic Preservation

New York State Education Department (SED)

Office of Court Administration (OCA)

Roswell Park Cancer Institute Corporation

Special Acts School District (SASD) - the specific SASD

State of New York

Appendix “D” (continued)

State University of New York (SUNY)

Public Libraries – the specific public library facility

Unified Court System of New York

APPENDIX "E"
ADDITIONAL ITEMS
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1. LABOR LAW PROVISIONS

A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in performance of the Work.

B. The CONSTRUCTION MANAGER specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:

1) no laborer, workmen, or mechanic, in the employ of the CONSTRUCTION MANAGER, subconsultant, or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;

2) the wages paid for legal day's work shall be not less than the prevailing rate of wages as defined by law;

3) the minimum hourly rate of wages to be paid shall be not less than that stated in this Contract and shall be designated by the Commissioner of Labor of the State of New York; and

4) the CONSTRUCTION MANAGER and every subconsultant shall post in a prominent and accessible place on the Site, a legible statement of all minimum wage rates and supplements to be paid or provided for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

C. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade that said persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the CONSTRUCTION MANAGER or any subconsultant shall not exceed the number submitted by the applicable standards of the New York State Department of Labor, or, in the absence of said standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.

D. All employees of the CONSTRUCTION MANAGER and each subconsultant shall be paid in accordance with the provisions of the Labor Law. Certified payroll copies shall be provided to the OWNER upon request.

E. The CONSTRUCTION MANAGER agrees that, in case of underpayment of wages to any worker engaged in the Work by the CONSTRUCTION MANAGER or any subconsultant, the OWNER shall withhold from the CONSTRUCTION MANAGER, out of payments due, an amount sufficient to pay said worker the difference between the wages required to be paid under this Contract and rates actually paid said worker for the total number of hours worked and that the OWNER may disburse said amount so withheld by the OWNER for and on account of the CONSTRUCTION MANAGER to the employees to whom said amount is due. The CONSTRUCTION MANAGER further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the OWNER pursuant to other provisions of this Contract.

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

1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or

2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

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

1) in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no CONSTRUCTION MANAGER, nor any person acting on behalf of said CONSTRUCTION MANAGER or subconsultant, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2) no CONSTRUCTION MANAGER, nor any person on behalf of said CONSTRUCTION MANAGER or subconsultant shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;

3) there may be deducted from the amount payable to the CONSTRUCTION MANAGER, by the OWNER under this Contract, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Contract; and

4) this Contract may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.

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

2. NONDISCRIMINATION

During the performance of this Contract, the CONSTRUCTION MANAGER agrees as follows:

A. The CONSTRUCTION MANAGER will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.

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

C. If directed to do so by the Commissioner of Human Rights, the CONSTRUCTION MANAGER will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of

the State's laws against discrimination as the State Commissioner of Human Rights shall determine.

D. The CONSTRUCTION MANAGER will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSTRUCTION MANAGER, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.

E. The CONSTRUCTION MANAGER will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the CONSTRUCTION MANAGER's books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Commissioner of Labor of the State of New York for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.

F. This Contract may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the CONSTRUCTION MANAGER has not complied with these nondiscrimination clauses, and the CONSTRUCTION MANAGER may be declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the CONSTRUCTION MANAGER satisfies the State Commissioner of Human Rights that the CONSTRUCTION MANAGER has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the CONSTRUCTION MANAGER, and an opportunity has been afforded the CONSTRUCTION MANAGER to be heard publicly in accordance with the Executive Law. Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

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

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

5. CONTRACT DEEMED EXECUTORY

The CONSTRUCTION MANAGER agrees that the Contract shall be deemed executory to the extent of moneys available from either (i) the proceeds of bonds issued by the Authority for the Contract, or (ii) moneys made available by the Client for the Contract, or (iii) other non-

Authority moneys made available from whatever source specifically for the Contract and no liability shall be incurred by the OWNER beyond moneys available therefore.

6. OWNERSHIP OF DOCUMENTS

Original drawings and specifications will become the property of the OWNER, and the CONSTRUCTION MANAGER may not use the drawings and specifications for any purpose not relating to the Project without the OWNER's consent. The CONSTRUCTION MANAGER may retain such reproductions of drawings and specifications as the CONSTRUCTION MANAGER may reasonably require. Upon completion of the Work or any early termination of this Contract, the CONSTRUCTION MANAGER will promptly furnish the OWNER with the complete set of original record prints. All such original drawings and specifications shall become the property of the OWNER who may use them, without the CONSTRUCTION MANAGER's permission, for any proper purpose including, but not limited to, additions to or completion of the Project.

7. TERMINATION

A. Termination for Cause

1. In the event that any provision of the Contract is violated by the CONSTRUCTION MANAGER or by any subconsultant, the OWNER may serve written notice upon the CONSTRUCTION MANAGER 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. If the violation or delay shall not cease or arrangements satisfactory to the OWNER shall not be made, the Contract shall terminate upon the date so specified by the OWNER. In the event of any such termination, the OWNER may take over the Work and prosecute same to completion by Contract or otherwise for the account and at the expense of the CONSTRUCTION MANAGER shall be liable to the OWNER for all costs occasioned the OWNER thereby. In the event of such termination the OWNER may take possession of and may utilize such materials, appliances, and plant as may be on the Site and necessary or useful in completing the Work.

2. If, after notice of termination of the CONSTRUCTION MANAGER under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the CONSTRUCTION MANAGER, Termination for Cause shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience" and the rights and obligations of the parties hereto shall in such event be governed by such clause.

B. Termination for Convenience

1. The OWNER, at any time, may terminate this Contract in whole or in part. Any such termination shall be effected by mailing or delivering to the CONSTRUCTION MANAGER a written notice of termination specifying the extent to which performance of Work under this Contract is terminated and the date upon which said termination becomes effective. Upon receipt of the notice of termination, the CONSTRUCTION MANAGER shall act promptly to minimize the expenses resulting from said termination. The OWNER shall pay the CONSTRUCTION MANAGER for actual expenses incurred by the CONSTRUCTION MANAGER and approved by the OWNER, including fringe benefits and fee, for the period extending from the date of the last approved payment requisition up to the effective date of the termination, but in no event shall the CONSTRUCTION MANAGER be entitled to compensation in excess of the total consideration of the Contract. In the event of said termination, the OWNER may take over the Work and prosecute same to completion by contract or otherwise and may take possession of and may utilize such materials, appliances, and plant as may be on the site and necessary or useful to complete the Work.

2. In the event of said termination, the OWNER may take over the Work and prosecute same to completion by contract, assignment of Subcontracts or otherwise and may take possession of and may utilize such materials, appliances as may be on the Project Site and necessary or useful to complete the Work.

8. SUSPENSION OR ALTERATION

A. The OWNER may order the CONSTRUCTION MANAGER in writing to suspend, delay, or interrupt performance of all or any part or 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 shall not be limited to, the following: latent field conditions, substantial program revisions, acquisition of rights-of-way or real property, financial crisis, labor disputes, civil unrest, or Acts of God.

B. Upon receipt of a suspension order, the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER specifically agrees that such suspension, interruption, or delay of the performance of the Work pursuant to this Item shall not increase the cost of performance of the Work of this Contract.

D. Time of Completion of the Work may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption, or delay, such determination to be set forth in writing.

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

Unless otherwise directed by the OWNER, the CONSTRUCTION MANAGER shall comply with all applicable codes and regulations required by law. Without limiting the generality of the foregoing, compliance with codes and regulations shall include, but shall not be limited to, those of the following which are applicable:

- A. Administrative Codes
- B. Zoning Resolutions
- C. State Building Code, NYS Uniform Fire Prevention and Building Code, latest edition
- D. Local Zoning Ordinances
- E. Local Building Codes
- F. State Hospital Code

If Federal Aid is obtained for any facilities described herein, then any and all regulations imposed by the participating Federal Agency shall be complied with in the performance of this Contract.

11. GOVERNMENT PROVISIONS

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

12. COOPERATION

The CONSTRUCTION MANAGER shall render any assistance which the OWNER may require with respect to any claim or action in any way relating to the CONSTRUCTION MANAGER's services during or subsequent to the design or construction of the Project including, without limitation, review of claims, preparation of technical reports and participation in negotiations both before and after it has otherwise completed performance of the Contract and without any additional compensation therefore.

13. LATE PAYMENT

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

14. DEATH OF THE CONSTRUCTION MANAGER

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

15. OWNER-CONSTRUCTION MANAGER RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

Each CONSTRUCTION MANAGER and subconsultant shall comply fully with all applicable provisions of the laws of the State of New York, the United States of America, and with all applicable rules and regulations, adopted or promulgated, by agencies or municipalities of the State of New York or the United States of America. The CONSTRUCTION MANAGER's and subconsultant's attention is specifically called to the applicable rules and regulations, codes, and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The CONSTRUCTION MANAGER shall report on compliance to the OWNER or OWNER's Representative.

17. AFFIRMATIVE ACTION AND NEW YORK STATE BUSINESS AND LABOR PARTICIPATION

A. The CONSTRUCTION MANAGER agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the OWNER, to fully comply with and cooperate in the implementation of an Affirmative Action Plan designed to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for Minority/Women Business Enterprise (M/WBE) participation in the performance of the Work, in such form and substance as herein stated. Failure to demonstrate good faith efforts to meet its CONSTRUCTION MANAGER's Workforce Utilization Plan will be a primary consideration for future responsibility determinations. The CONSTRUCTION MANAGER further agrees to incorporate all Affirmative Action provisions of the Contract in all subcontracts, regardless of tier.

B. The CONSTRUCTION MANAGER must submit to the OWNER, and the prospective subconsultant's must submit to the CONSTRUCTION MANAGER, an Affirmative Action Plan which demonstrates its best efforts to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for MBE/WBE participation in

the performance of the Work, in such form and substance as may be required by the OWNER. A meeting to review these submissions may be scheduled by the OWNER.

C. These Affirmative Action 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.

D. In Accordance with Article 15A of the Executive Law and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development, the CONSTRUCTION MANAGER agrees to be bound by the following clauses. In any circumstances of uncertainty or conflict, the Regulations of the Minority and Women's Business Development Division supersede this information.

1) Utilization Plan; Waivers

a. The CONSTRUCTION MANAGER shall submit to the OWNER a Utilization Plan on forms provided by the OWNER within ten days of notification of selection. The Utilization Plan shall list all subconsultants and suppliers the CONSTRUCTION MANAGER intends to use on the Contract and indicate which ones are M/WBEs. The Utilization Plan shall be prepared to achieve the participation goals indicated in the Request for Proposal.

b. The OWNER will review the Utilization Plan and will issue to the CONSTRUCTION MANAGER a written notice of acceptance or deficiency within 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 Contract scope of work which the OWNER has determined can be reasonably structured by the CONSTRUCTION MANAGER 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 Utilization Plan.

c. The CONSTRUCTION MANAGER shall respond to the notice of deficiency within seven 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 CONSTRUCTION MANAGER and direct the CONSTRUCTION MANAGER to submit, within five business days, a request for a partial or total waiver of M/WBE participation goals on forms provided by the OWNER. Failure to file the waiver form in a timely manner may be grounds for disqualification of the proposal.

d. The CONSTRUCTION MANAGER who has made good faith efforts to obtain commitments from M/WBE subconsultant's and suppliers prior to submitting its Utilization Plan may submit a request for waiver at the same time it submits its Utilization Plan. If a request for waiver is submitted with the Utilization Plan and is not accepted by the OWNER at that time, the provisions of clauses b. and c., regarding the notice of deficiency and written remedy will apply. In this case, the CONSTRUCTION MANAGER may submit a second request for waiver as directed by the OWNER.

e. If the CONSTRUCTION MANAGER does not submit a Utilization Plan, remedy deficiencies in a Utilization Plan, submit a request for waiver, or if the OWNER determines that the Utilization Plan does not indicate that the M/WBE participation goals will be met and/or that the CONSTRUCTION MANAGER has failed to document good faith efforts, the OWNER may disqualify the CONSTRUCTION MANAGER as being not-responsible.

f. The CONSTRUCTION MANAGER shall attempt to utilize, in good faith, any MBE or WBE identified within its Utilization Plan, at least to the extent indicated in the Plan.

2) Administration Hearing on Disqualification

a. If the OWNER disqualifies a CONSTRUCTION MANAGER for any of the reasons set forth in 1) e. above, the CONSTRUCTION MANAGER shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the OWNER to review the determination of disqualification and non-responsibility of the CONSTRUCTION MANAGER.

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 30 days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.

3) Good Faith Efforts

In order to show that it has made good faith efforts to comply with the M/WBE participation goals of this Contract, the CONSTRUCTION MANAGER shall submit such documentation as will enable the OWNER to make a determination in accordance with the criteria set forth in Section 313 of the Executive Law and the Rules and Regulations promulgated there under.

All firms that are awarded contracts by the OWNER should use these Guidelines for the preparation of all "good faith efforts" documentation. If your firm incurs difficulty in meeting your Minority and Women-owned Business Enterprises (M/WBE) goals, these Guidelines can be utilized to assist your firm in preparing the required "good faith efforts" documentation.

Responses to information in the Guidelines should be given in an item-by-item format following the numerical sequence as presented and submitted with your Request for Waiver to the Office of Opportunity Programs. If you fail to adequately document and respond to each item, it may result in a finding of non-compliance. If you need assistance, please contact the Office of Opportunity Programs at (518) 257-3706 (Upstate) or (212) 273-5038 (Downstate).

Guidelines

1. Attach a copy of the completed Utilization Plan in accordance with M/WBE goals established in the Contract Documents.
2. Submit a written request for a referral list of M/WBE's certified by Empire State Development by trade or service from the Opportunity Programs Group for subcontracting and procurement opportunities.
3. Provide a record of written solicitations made to NYS certified M/WBE's obtained from the NYS Empire State Development directory of certified businesses located at: <http://www.esd.ny.gov/MWBE/directorySearch.html> . Include dates and copies of solicitations made.
4. Contact all the Empire State Development certified M/WBEs posted in the list of interested subcontractors and suppliers posted on DASNY's website: <http://www.dasny.org/construc/bidops/03C2.php>
5. 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.
6. 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.

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.

4) Compliance Reports

The CONSTRUCTION MANAGER shall submit a *Compliance Report* with each *PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION* form submitted to the OWNER. *Compliance Reports* not submitted at such times as required by the OWNER shall be cause for the OWNER to delay implementing scheduled payments to the CONSTRUCTION MANAGER.

5) CONSTRUCTION MANAGER's Failure to Meet M/WBE Participation Goals

- a. If the CONSTRUCTION MANAGER, after making good faith efforts, is unable to comply with a Contract's M/WBE participation goals, the CONSTRUCTION MANAGER may submit a request for a partial or total waiver on forms provided by the OWNER documenting good faith efforts by the CONSTRUCTION MANAGER to meet such goals. If the documentation required with the request for waiver is complete, the OWNER shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- b. If the OWNER, upon review of the CONSTRUCTION MANAGER's Utilization Plan and compliance reports, determines that the CONSTRUCTION MANAGER is failing or refusing to comply with the Contract's M/WBE participation goals, and no waiver has been issued in regards to such non-compliance, the OWNER may issue a notice of deficiency to the CONSTRUCTION MANAGER. The CONSTRUCTION MANAGER must respond to the notice of deficiency within seven days of receipt. Such response may include a request for partial or total waiver of M/WBE participation goals.

6) CONSTRUCTION MANAGER and OWNER Complaints; Arbitration

a. Subsequent to the award of this Contract, if the CONSTRUCTION MANAGER submits a request for waiver of M/WBE participation goals and the OWNER denies the request or fails to respond in any way within 20 days of receiving it, or if the CONSTRUCTION MANAGER has received a written determination from the OWNER that the CONSTRUCTION MANAGER is failing or refusing to comply with goals, the CONSTRUCTION MANAGER may file a complaint with the Director, Division of Minority and Women's Development in the Department of Economic Development ("Director"), according to the provisions of Section 316 of the Executive Law. The complaint must be filed within 20 days of the OWNER's receipt of the request for waiver, if the OWNER has not responded in that time, or within 20 days of a notification that the request has been denied by the OWNER or within 20 days of receipt of notification from the OWNER that the CONSTRUCTION MANAGER is failing or refusing to comply with goals.

b. If the CONSTRUCTION MANAGER fails or refuses to comply with goals for participation by M/WBEs as established by this Contract, the OWNER may file a complaint with the Director pursuant to Section 316 of the Executive Law.

c. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.

d. The party filing a complaint, whether the CONSTRUCTION MANAGER 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.

e. 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 30 days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the OWNER and the CONSTRUCTION MANAGER, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.

f. Upon conclusion of the arbitration proceeding, the arbitrator 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 CONSTRUCTION MANAGER. The award of the arbitrator with respect to the alleged violation of the Contract or the refusal of the OWNER to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.

g. Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either (i) adopt the recommendation of the arbitrator; (ii) determine that no sanctions, fines or penalties should be imposed; or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty.

h. The Director, within ten days of receipt of the arbitrator's award and recommendations, will issue a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

i. The determination of the OWNER or the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER the estimated amount of the fines and penalties which may be imposed pursuant to subdivisions 6.g. and 6.h. of this paragraph. Said amounts shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

7) Subcontracts

The CONSTRUCTION MANAGER will include the provisions of paragraphs 3. and 6. above in every subcontract, in such manner those such provisions will be binding upon the subconsultant as to work in connection with this Contract.

E. The following forms are to be used in submitting Affirmative Action Plans and are hereby made a part of the Contract:

- 1) Utilization Plan/Request for Waiver (AAP 1.0)
- 2) Six-Month Utilization Workforce Projection Schedule (EEO 4.0)
- 3) Compliance Report (AAP 7.0)
- 4) Good Faith Efforts Guidelines (AAP 9.0)

F. The CONSTRUCTION MANAGER agrees to fully comply and cooperate with the OWNER's policy to promote New York State business and labor participation.

1) In the event this Contract is in the amount of one million dollars or more, the CONSTRUCTION MANAGER shall document their efforts to encourage the participation of New York State business enterprises as suppliers and subconsultants. Documented efforts by the CONSTRUCTION MANAGER shall consist of showing that such CONSTRUCTION MANAGER has (a) solicited bids or proposals, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned business, or (b) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or (c) placed notices for subconsultants and suppliers in newspapers, journals and other trade publications distributed in New York State, or (d) participated in subconsultant outreach conferences. If the CONSTRUCTION MANAGER determines that New York State business enterprises are not available to participate on such Contract as subconsultants or suppliers, the CONSTRUCTION MANAGER shall provide a Statement indicating the method by which such determination was made. If the CONSTRUCTION MANAGER does not intend to use subconsultants on such contract, the CONSTRUCTION MANAGER shall provide a Statement verifying such intent.

2) In the event this Contract is in the amount of one million dollars or more, the CONSTRUCTION MANAGER shall submit post award compliance reports documenting their efforts to notify New York State residents of employment opportunities arising in New York State out of such Contract by listing any such positions with the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

18. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE & CONTINUING INTEGRITY

A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.

B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the selected vendor shall, within ten days following either oral or written notice that it must comply, submit, in the form provided by the OWNER, a duly executed NYS Vendor Responsibility Questionnaire to the OWNER at the following address:

DASNY
NYS Vendor Responsibility Questionnaire Officer
Procurement Department

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

D. The CONSULTANT shall at all times during the Contract term remain responsible. the CONSULTANT agrees, if requested by the President of the 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.

E. The President of the OWNER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of the OWNER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

F. Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, the Contract may be terminated by the President of the OWNER or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of the OWNER or his or her designee to be non-responsible. In such event, the President of the OWNER or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

19. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSTRUCTION MANAGERS

A. Officers and employees of the OWNER are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, consultant, attorney, engineer, inspector or CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the OWNER under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

In addition to the prohibition of Section 73 (5) of the Public Officers Law, the OWNER has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER is expected to:

- 1) furnish all goods, materials and services to the OWNER as contractually required and specified,
- 2) submit complete and accurate reports to the OWNER and its agents as required,
- 3) not seek, solicit, demand or accept any information, verbal or written, from the OWNER or its agents that provides an unfair advantage over a competitor,

- 4) not engage in any activity or course of conduct that restricts open and fair competition on OWNER-related projects and transactions,
- 5) not engage in any course of conduct with OWNER employees or its agents that constitutes a conflict of interest, in fact or in appearance, and
- 6) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.

D. The OWNER encourages the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER agrees to notify the OWNER's Office of Internal Affairs at 518-257-3193 of any activity by an employee of the OWNER that is inconsistent with the contents of this Section.

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

I. CONSTRUCTION MANAGER shall at all times during the Contract term remain responsible. CONSTRUCTION MANAGER agrees, if requested by the President of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

J. The President of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of CONSTRUCTION MANAGER. In the event of such suspension, CONSTRUCTION MANAGER will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, CONSTRUCTION MANAGER 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.

K. Notwithstanding any other provision of this Contract, upon written notice to CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER's expense where CONSTRUCTION MANAGER is determined by the President of Owner or his or her designee to be non-responsible. In such event, the President of Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

L. By entering into this Contract, CONSTRUCTION MANAGER certifies, under the penalties of perjury, that CONSTRUCTION MANAGER is not on the list created pursuant to

paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. CONSTRUCTION MANAGER further certifies that CONSTRUCTION MANAGER will not utilize on this Contract any Subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

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

20. COOPERATION WITH INVESTIGATIONS

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

The CONSTRUCTION MANAGER shall grant the OIA or the Representative the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the CONSTRUCTION MANAGER, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the CONSTRUCTION MANAGER, relating to the CONSTRUCTION MANAGER. 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, CONSTRUCTION MANAGER and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. At the OIA’s or the Representative’s request, said materials shall be provided in a computer readable format, where available. At the request of the OIA or the Representative, the CONSTRUCTION MANAGER shall execute such documents, if any, as are necessary to give the OIA or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the CONSTRUCTION MANAGER but not currently in the CONSTRUCTION MANAGER’s physical possession. The CONSTRUCTION MANAGER shall not enter into any agreement with a Subcontractor, CONSTRUCTION MANAGER or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The CONSTRUCTION MANAGER shall assist the OIA or the Representative in obtaining access to past and present Subcontractor, CONSTRUCTION MANAGER 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, CONSTRUCTION MANAGERS and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

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

The CONSTRUCTION MANAGER shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, CONSTRUCTION MANAGERS 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 CONSTRUCTION MANAGER shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision.

The CONSTRUCTION MANAGER shall not make any payments to a Subcontractor, CONSTRUCTION MANAGER or supplier from whom the CONSTRUCTION MANAGER has failed to obtain and supply to the OIA or the Representative complete, accurate and truthful

information in compliance with a request from the OIA or the Representative to the CONSTRUCTION MANAGER.

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

21. FALSE STATEMENTS/INFORMATION

A. False statements, information or data submitted on or with applications for payment may result in one or more of the following actions:

- 1) Termination of the Contract
- 2) Disapproval of future contracts and sub-contracts
- 3) Withholding of final payment on the Contract
- 4) Civil and/or criminal prosecution

B. These provisions are solely for the benefit of the OWNER, and any action or non-action hereunder by the OWNER shall not give rise to any liability on the part of the OWNER.

22. INVALID PROVISIONS

If any term or provision of the Contract or the application thereof to any person, firm or corporation, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract, or the application of such terms or provisions to persons, firms or corporations, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract shall be valid and be enforced to the fullest extent permitted by law.

23. CONFLICTING TERMS

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

24. GREEN AND CLEAN STATE BUILDINGS

A. The CONSTRUCTION MANAGER shall, to the maximum extent practicable, follow guidelines for the construction of "Green Buildings" including, but not limited to, the OWNER's Sustainability Policy, guidelines set forth in Tax Law Section 19, which created the Green Buildings Tax Credit and the United States Green Building Council's (USGBC) LEED (Leadership in Energy and Environmental Design) rating system, in all buildings as applicable.

B. The CONSTRUCTION MANAGER shall be required to demonstrate compliance to the maximum extent practicable, with the New York State Green Building Construction Act (GBCA, enacted in 2009), affecting state owned facilities and with the New York State Executive Order 88. The GBCA calls for LEED submission, benchmarking, energy and water use reporting and air quality reporting based on building size and use. Under EO #88 buildings across the state owner entity's full portfolio shall increase energy efficiency by twenty (20) percent in seven years relative to established energy use index baselines as required.

C. The CONSTRUCTION MANAGER shall incorporate energy-efficient criteria consistent with ENERGY STAR and any other energy efficiency levels as may be designated by the New York State Energy Research and Development Authority (NYSERDA) into all specifications developed for new construction and renovation.

D. The CONSTRUCTION MANAGER shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the CONSTRUCTION MANAGER in analyzing the design and providing recommendations to maximize energy efficiency and to promote the eligibility of the capital cost incentives included in NYSERDA's New Construction Program. Assistance shall include any requisite modeling and other requisite analysis. Costs of these services are part of the professional's service requirements.

25. 2005 PROCUREMENT LOBBYING LAW

A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of and agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

B. For any contract \$15,000 or more each proposer shall submit, with its proposal, on the form provided herewith, *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k*. The information contained in *SFL 139 Form 1: Professional's Certifications Pursuant to*

SFL § 139-j and § 139-k will serve as an informational resource to aid the OWNER in making an award determination.

C. The OWNER reserves the right to terminate this contract in the event it is found that the certification filed by the CONSTRUCTION MANAGER in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the OWNER may exercise its termination right, such termination constituting a termination for cause, by providing written notification to the CONSTRUCTION MANAGER in accordance with the terms of Article 5.1 of this Contract – Termination for Cause.

26. NONCOMPLIANCE

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