

3/16/2021

**DORMITORY AUTHORITY
TERM CONTRACT NO.: TBD**

CONTRACT

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

WHEREAS, the OWNER will be engaged in the construction and rehabilitation of various facilities in New York State, for which the CONSULTANT 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 selected the CONSULTANT to provide **Environmental Management Consulting Services** to be specifically identified within each Work Authorization; and

WHEREAS, the OWNER and the CONSULTANT 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; and

NOW, THEREFORE, the OWNER and the CONSULTANT 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 _____ through _____, except that any and all Work Authorization(s) assigned within said Term shall be completed regardless of the contract completion date. The CONSULTANT shall continue to render services for each Work Authorization it is assigned within the term of this Contract and any such extension(s) until the completion of said Work Authorization(s) unless the OWNER gives written notice to the contrary.

The CONSULTANT's Services are contained in Appendix "A", entitled **SCOPE OF SERVICES**, which is attached to 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 CONSULTANT to provide Additional Services and the CONSULTANT shall provide said Additional Services when so directed. Payment for said Additional Services shall be in accordance with Article VI.C.

ARTICLE III: EXTRA WORK

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

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 18% MBE, 12% WBE and 6% SDVOB. The goals refer to the utilization of M/WBE and SDVOB subconsultants on DASNY 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 CONSULTANT shall cooperate with said consultant or consultants.
- B. The CONSULTANT 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 CONSULTANT shall propose another subconsultant for that portion of the required services. The CONSULTANT shall be responsible to the OWNER for the timely and efficient completion of all services performed by said approved subconsultants.
- C. The CONSULTANT shall remove from the Project any employee of the CONSULTANT, any employee of the subconsultant or the subconsultant when so directed by the OWNER.
- D. Prior to execution of a Contract between the CONSULTANT and proposed subconsultant, the CONSULTANT shall submit a copy of the proposed subconsultant Contract to the OWNER for approval. The OWNER shall not be liable for payment to the CONSULTANT for any cost incurred under any subconsultant Contracts unless said approvals are obtained. The fees of any subconsultants retained by the CONSULTANT 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 CONSULTANT for services required under Article III shall be paid as outlined in Article VI.C.
- E. The CONSULTANT shall pay its subconsultants the full amount due them from their proportionate share of each requisition for payment submitted by the CONSULTANT and paid by the OWNER. The CONSULTANT shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.
- F. All services rendered by the CONSULTANT for each Project shall be performed by or under the immediate supervision of experienced CONSULTANT(s) licensed and registered in the State of New York possessing expertise in the discipline of the service being rendered. If the CONSULTANT chooses to subcontract or affiliate with another professional entity or organization for all or any portion of the CONSULTANT's scope of services, the CONSULTANT shall subcontract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services. The CONSULTANT 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

Maximum Amount Payable

The Maximum Amount Payable for all services required, pursuant to this Contract, shall be the total of all Work Authorizations listed on the attached Appendix "B", entitled **SUMMARY OF PAYMENTS**. Compensation for each item of service authorized in a Work Authorization shall be established on a Lump Sum (LS) or Actual Expense (AE) basis, not to exceed the total value of such Work Authorization awarded. The CONSULTANT shall be notified via a Work Authorization containing a selected listing of the specific

services be performed and a revised Appendix "B", entitled **SUMMARY OF PAYMENTS**. The Work Authorization(s) issued under this Contract shall serve as a formal acknowledgment of any change to this Contract and shall be made a part hereof.

A. **Basis for Payment**

Payment by the OWNER to the CONSULTANT shall be based upon the fee as it appears in each Work Authorization. The fee will be based upon the specific Scope of Services identified in the proposal. Compensation shall be based on the actual hourly rate and actual hours worked by the employee excluding travel time. Where applicable, hourly staffing charges will be based on the agreed-upon rates contained in Appendix "C", entitled **APPROVED CLASSIFICATIONS AND RATES** which is attached to and made a part hereof, and the agreed-upon multiplier of 2.50 covering the CONSULTANT's overhead and profit.

Payment for services for a Work Authorization shall be made monthly in proportion to services performed for the Work Authorization and approved by the OWNER. Payments shall be requisitioned on the OWNER's form, **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION**, with applicable payroll information, Compliance Report, and other appropriate backup. Where required, timesheet information shall show the names and rates of pay of all personnel performing services during the payment period, and their position classification. Only the **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION** form shall be used to requisition payment.

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

B. **Reimbursables**

Payment for approved Reimbursables for a Work Authorization pursuant to Article VII shall be made monthly on the basis of invoices submitted by the CONSULTANT and approved by the OWNER.

C. **Additional Services and Extra Work**

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

1. Negotiated Lump Sum; or
2. Actual Cost.

Actual Cost shall include the following specific items:

- a. Principals at the fixed rate of \$N/A per hour.
- b. Direct Salary of technical employees, other than Principals, times a multiplier approved by the OWNER. Multiplier must be supportable by appropriate audit.

Direct Salary as used herein shall be the payroll cost of salaries or wages paid directly to technical employees of the CONSULTANT or approved subconsultants employed on the Work Authorization, supportable by payroll and appropriate audit.

Technical Employees, other than Principals, shall mean employees trained in areas of technical competence, such as architecture, engineering, drafting, survey, and related specialties, but does not include clerical, typing, or

administrative assistance. A Schedule of pay rates for technical employees and their appropriate titles is listed in Appendix "C", entitled **APPROVED CLASSIFICATIONS AND RATES**, which is attached to and made a part hereof.

- c. Lump sum basis, in an amount mutually agreed to in writing by the OWNER and the CONSULTANT prior to the performance of the services. The fee shall be further support by a cost proposal. The cost proposal shall include employee title, hours and multiplier.
- d. Specific Approved Reimbursable Expenses.

ARTICLE VII: REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the compensation for the Original Scope of Services and include the actual expenditures supported by detailed receipts/documentation made by the CONSULTANT, or the approved subconsultant, as approved by the OWNER. Said reimbursement shall be limited to those specific items listed below:

- A. transportation and living expenses in connection with out-of-town travel when authorized in advance by the OWNER, and when travel is in excess of fifty (50) miles one way from the CONSULTANT's closest office. Reimbursement shall be limited to the rates provided herein:

- 1. mileage at the standard business mileage rate allowed by the Internal Revenue Service in effect at the time the travel occurs. Other types of transportation (rental car, bus, etc.) are allowed when deemed to be cost effective and are authorized in advance by the OWNER.

2.	Meals	<u>NYC Rate*</u>	<u>Upstate Rate</u>
	Breakfast	\$ 6.00	\$ 5.00
	Lunch	10.00	7.00
	Dinner	43.00	31.00
	Overnight Incidentals	3.00	2.00
	Maximum per Diem	\$62.00	\$45.00

* Also applies to Nassau, Suffolk, Rockland and Westchester Counties and out-of-state travel.

		<u>Departure**</u>	<u>Arrival**</u>
	Breakfast	Before 7:00 AM	After 8:00 AM
	Lunch	Before 11:30 AM	After 2:00 PM
	Dinner	Before 6:00 PM	After 7:00 PM

** Departure or Arrival predicated on residence.

- 3. lodging per receipt up to the maximum Federal Government Services Administration allowable lodging rates for the New York metropolitan and upstate New York areas in effect when the travel occurs (see www.gsa.gov).

- B. fees paid to authorities having jurisdiction over the Project;
- C. reproduction costs when engaging the services of a printing firm and postage;
- D. cost of renderings or models for the OWNER's use; and

- E. film and film processing.

ARTICLE VIII: WITHHOLDING OF PAYMENTS

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

- 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, Construction Manager, if applicable, 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 CONSULTANT 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 CONSULTANT pursuant to the provisions of this Contract; or
- E. to assure payment of fines and penalties which may be imposed on the CONSULTANT pursuant to Article 17 - Affirmative Action in the Additional Items appendix, Section 17 paragraph D., subdivisions 6.g and 6.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.

ARTICLE IX: FINAL PAYMENT AND RELEASE

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

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

ARTICLE X: OWNER'S PROCEDURE

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

ARTICLE XI: INSURANCE

- A. The CONSULTANT 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 Term Contract for Professional Services by the CONSULTANT or by anyone directly or indirectly employed by the Professional, or by anyone for whose acts the CONSULTANT may be liable. The CONSULTANT shall obtain all the insurance required under this Term Contract for Professional 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 Professional Services prior to the Effective Date. The CONSULTANT shall not

commence work under the Contract until the CONSULTANT has obtained all the insurance required under this Article:

1. Workers' Compensation Law Requirements

- (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 CONSULTANT'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.

2. Commercial General Liability (CGL) Insurance

The CGL insurance policy shall cover the liability of the CONSULTANT for bodily injury, property damage, and personal/advertising injury arising from performance of the Professional 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 \$2,000,000; the general aggregate limit shall be at least \$2,000,000; the personal and advertising injury limit shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$2,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:

- (a) If the CONSULTANT proposes the use of a policy other than the ISO form CG 00 01 12 07, the CONSULTANT 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 CONSULTANT 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 as Additional Insureds, and for form CG 20 37 10 01 or its equivalent, specifically listing the Project location.
- (c) If the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 Professional 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 Professional 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 Professional 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.

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 OWNER. Any other insurance maintained by OWNER shall be excess of and shall not contribute with the CONSULTANT'S or its Subconsultant's insurance, regardless of the "other insurance" clause contained in OWNER'S own policy of insurance.

- 2.1 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.
- 2.2 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.
- 2.3 Professional Liability, with limits of not less than two million Dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate subject to a deductible or self insured retention of not more than one hundred thousand Dollars (\$100,000.00) per claim or an amount acceptable to the OWNER. CONSULTANT shall maintain policy coverage for a period of three years following the final acceptance of the Project by the OWNER.
- 2.4 If applicable, Asbestos Professional Liability, with a limit of two million dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate and a maximum self-insured retention of one hundred thousand Dollars (\$100,000.00) or an amount acceptable to the OWNER.
- 2.5 If applicable, Environmental Engineers and Consultants Professional Liability, with a limit of two million dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate and a maximum self-insured retention of one hundred thousand Dollars (\$100,000.00), or an amount acceptable to the OWNER, for Professionals involved in the removal, repair, installation and testing of underground petroleum storage tanks or in petroleum remediation operations, or Professionals engaged in or performing Work related to excavation, loading, transporting or unloading of hazardous and/or contaminated materials.
- 2.6 If applicable, should the CONSULTANT exercise design delegation under the terms of this agreement, then the CONSULTANT shall require as part of the Contract Documents, the delegatee design professional to obtain professional liability insurance with limits of not less than two million Dollars (\$2,000,000.00) each claim/\$2,000,000 annual aggregate subject to a deductible or self insured retention of not more than one hundred thousand Dollars (\$100,000.00) per claim or an amount acceptable to the OWNER. The CONSULTANT shall specify the above requirements as part of the Contract documents and shall require the delegatee design professional to submit proof of insurance in the amount indentified above. This submittal shall be required prior to any receipt of documents prepared by the delegatee design professional.

3. General Insurance Requirements

Unless otherwise required, each insurance policy except the CONSULTANT'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 Professional Services, except where this Contract for Professional 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 Professional 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 Professional Services;
- (c) shall be written on an occurrence basis except where this Term Contract for Professional 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.

- 3.1 Should the CONSULTANT fail to provide or maintain any insurance required by this Term Contract For Professional Services, the OWNER may, after providing written notice to the CONSULTANT, purchase insurance covering the CONSULTANT and charge back such purchase to the CONSULTANT.
- 3.2 At any time that the coverage provisions and limits on the policies do not meet the provisions and limits set forth therein, the CONSULTANT shall immediately cease work on the Project. The CONSULTANT 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 CONSULTANT not having insurance required by this Term Contract for Professional Services shall not give rise to a delay claim or any other claim against the OWNER or the Client.
- 3.3 The CONSULTANT 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 CONSULTANT. The requirement to secure and maintain such insurance coverage is solely for the benefit of the CONSULTANT. Failure of the CONSULTANT 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.
- 3.4 Neither the procurement nor the maintenance of any type of insurance by the OWNER and the CONSULTANT shall in any way be construed or be deemed to limit, discharge,

waive or release the CONSULTANT from any of the obligations and risks accepted by the CONSULTANT or to be a limitation on the nature or extent of said obligations and risks.

- 3.5 The same conditions as are applicable to the CONSULTANT under these insurance requirements shall be applicable to the CONSULTANT'S subconsultants. However, the CONSULTANT shall keep the subconsultant's Certificates of Insurance on file and produce them upon the demand of the OWNER.
- 3.6 The CONSULTANT and its subconsultants shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and the insurance companies issuing such policies. The CONSULTANT shall take every precaution against injuries to persons or damage to property. The CONSULTANT 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.
- 3.7 Notwithstanding any other provision of this Article, the OWNER may require the CONSULTANT to provide, at the expense of the OWNER, any other form or limit of insurance necessary to secure the interests of the OWNER.

4. Professional Liability Insurance Requirements

- 4.1 The CONSULTANT'S professional liability policy(ies):
 - (a) shall be issued by an insurance company licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER;
 - (b) shall be kept in force throughout performance of the Professional's services and for five (5) years after the end of such performance if on a claims-made policy;
 - (c) may be a claims-made policy; and,
 - (d) shall be evidenced by a certificate of insurance acceptable to the OWNER.

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

- 4.2 If applicable, as referenced in Article XI (2.4) the CONSULTANT'S Asbestos Professional Liability policy:
 - (a) shall provide coverage of the CONSULTANT'S negligence, errors or omissions in rendering or failing to render services of an engineering or consulting nature arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing asbestos, and the failure to advise of or detect the existence or the proportions of asbestos.
- 4.3 If applicable, as referenced in Article XI (2.5) the CONSULTANT'S Environmental Engineers and Consultants Professional Liability policy:
 - (a) shall provide coverage of the CONSULTANT'S negligence, errors or omissions in rendering or failing to render services of an engineering or consulting nature arising out of their environmental engineering or consulting.

5. Certificates Of Insurance

Certificates of Insurance must be submitted by the CONSULTANT 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 CONSULTANT that the insurance coverage described is in effect for the policy term shown. Upon the request of the OWNER, the CONSULTANT shall furnish the OWNER with certified copies of each policy.

6. Effect Of Insurance

Compliance with insurance requirements shall not relieve the CONSULTANT of any responsibility to indemnify the OWNER for any liability to the OWNER as specified in any other provision of this Term Contract For Professional Services and the OWNER shall be entitled to pursue any remedy in law or equity if the CONSULTANT fails to comply with the contractual provisions of this Term Contract For Professional Services. Indemnity obligations specified elsewhere in this Contract For Professional 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.

7. 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.

8. Property Damage Disclaimer

The OWNER shall not be liable, and shall provide no insurance, for any loss or damage incurred by the CONSULTANT 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 CONSULTANT hereby releases and discharges the OWNER and its Related Parties of and from all liability to the CONSULTANT, and to anyone claiming by, through or under the CONSULTANT, by subrogation or otherwise, on account of any loss or damage to such tools, machinery, equipment or other property, however caused.

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

The CONSULTANT 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(s) 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 CONSULTANT and its consultants and subconsultants relating to the project(s). 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 CONSULTANT to the OWNER upon demand.

ARTICLE XIV: ASSIGNMENT

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

ARTICLE XV: 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 CONSULTANT has caused this Contract to be signed by it's duly authorized officer on the _____ day of _____, 20__.

Insert Firm Name

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 _____ of the Dormitory Authority - State of New York, the corporation described in and which executed the foregoing instrument; and that he/she signed their name thereto by authority of the Board of said corporation.

Notary Public

CONSULTANT'S ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF CONSULTANT 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

CONSULTANT'S ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF CONSULTANT 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

Environmental management consulting firms shall assist DASNY in meeting its statutory obligations under *State Environmental Quality Review Act (SEQRA)*, which contains the requirements for the *State Environmental Quality Review (SEQR)* process, the *New York State Historic Preservation Act of 1980 (SHPA)*, especially the implementing regulations of section 14.09 of the *Parks, Recreation and Historic Preservation Law (PRHPL)*, and the *State Smart Growth Public Infrastructure Policy Act (“SSGPIPA”)* procedures.

OBJECTIVES

The services required generally involve providing environmental management consulting services for specified projects and the potential of developing project related, stamped contract documents (plans and specifications) as needed. The basic on-call environmental management consulting services to be performed under this Contract shall include, but not limited to the following:

ARTICLE 1 – GENERAL PROJECT SERVICES

1.1 Essential Services

The CONSULTANT agrees to provide all necessary architectural and engineering services required to professionally accomplish the CONSULTANT’S scope of services, which may include any or all of the services outlined in Articles 1 through 3 of this Term Contract for Professional Services. The specific services to be provided for a Project shall be more fully described in each Work Authorization issued under this Term Contract for Professional Services.

1.1.1 Project Description – Environmental Consulting Services

The CONSULTANT shall be required to provide diverse environmental consulting, engineering, construction administration and operational services at various client facilities throughout the State of New York, outside of Suffolk, Nassau, Queens, Kings, Richmond, New York, Bronx and Westchester Counties.

A specific Project description will be included in each Work Authorization issued under this Term Contract for Professional Services.

1.1.2 Scope of Services Description – Environmental Consulting Services

Planning and managing environmental related support services as detailed below throughout all phases of a project.

A specific scope of services will be included in each Work Authorization issued under this Term Contract for Professional Services.

The services provided may include, but are not limited to, one or more of the following services:

- a. full remedial investigation, design, and operation,
- b. review of available data and previous reports,
- c. preparation of work plans that could include remedial action plans including site

- investigation activities,
- d. site specific quality assurance/quality control plans,
- e. site specific Standard Operating Procedures (SOP),
- f. health and safety monitoring, and consulting.

All services provided by the CONSULTANT shall be in full compliance with all Federal, State, and local laws, rules, regulations and the policies and procedures of the OWNER. It shall be the CONSULTANT'S responsibility to obtain any approval, variance or waiver from any regulatory agency necessary to conduct the appropriate project. It shall also be the CONSULTANT'S responsibility to provide capably trained person(s) for the monitoring of abatement services; "capably trained" is generally regarded as having a minimum of two years field experience, as well as required certifications and/or licenses.

1.1.3 Planning, Programming and Feasibility Studies

A specific scope of planning, programming and feasibility services will be included in each Work Authorization issued under this Term Contract for Professional Services.

1.1.4 Use of OWNER'S Project Management System

The CONSULTANT shall record all project related information in the OWNER'S Project Management System (Contract Management™) in accordance with the DASNY Contract Management User Guide Manual. The CONSULTANT agrees to request user accounts to the OWNER'S Project Management System for each employee who will be working on the project. The CONSULTANT further agrees to have their employees attend training in the use of the OWNER'S Project Management System, and to utilize the DASNY Contract Management User Guide Manual to perform necessary tasks. Training will be provided by the OWNER.

1.1.5 Project Description – Environmental Management Services

The CONSULTANT shall be required to provide environmental management consulting services for specified projects. The CONSULTANT may also be required to provide consulting, engineering, construction administration and operational services at various client facilities throughout the State of New York outside of Suffolk, Nassau, Queens, Kings, Richmond, New York, Bronx and Westchester counties. A specific project description shall be included in each Work Authorization issued under this Term Contract for Professional Services.

1.1.6 Scope of Services – Environmental Management Services

The services provided may include, but are not limited to, one or more of the following services:

- a. New York State Department of Environmental Conservation ("NYSDEC") SEQRA Environmental Assessment Forms ("EAFs") with supporting technical documentation and/or various technical environmental analyses;
- b. Environmental impact statements;
- c. Environmental site assessments/audits;
- d. Hazardous waste remediation plans;
- e. Natural resources inventories, assessments, mitigation planning and design;
- f. Historic, architectural, and archaeological studies;
- g. SSGPIPA Smart Growth assessments (incorporating the new criterion concerning mitigation of risk due to sea-level rise, storm surge and flooding), including the preparation of DASNY Smart Growth Impact Statement Assessment Forms;

- h. Environmental mitigation compliance monitoring;
- i. Planning and feasibility studies; Public outreach campaign planning and implementation; and,
- j. Generation of project related plans and specifications as required.

The level of environmental review will be determined on a project-by-project basis. Technical areas of the environmental management scope-of-work may include, but are not limited to, one or more of the following services:

- a. Land use, zoning, and public policy (including waterfront revitalization program/coastal zone policy consistency determinations);
- b. Socioeconomic conditions (includes population, housing stock and economic activities such as business and employment);
- c. Community facilities and services (i.e., public or publicly-funded schools, hospitals, libraries, day care centers, and fire and police protection);
- d. Open space and recreational facilities (i.e., land designated for leisure, play, or sport, or land set aside for the protection and/or enhancement of the natural environmental);
- e. Shadows;
- f. Historic resources (encompasses districts, buildings, structures, sites, and objects of historical, aesthetic, cultural, and archaeological importance);
- g. Urban design and visual resources;
- h. Natural resources (defined as plant and animal species, as well as, habitat areas and ecological systems, including surface and ground waters, soils [upland and wetland], drainage systems, wetland, dunes, beaches, grasslands, woodlands, landscaped areas, gardens, parks, and built structures used by wildlife);
- i. Hazardous materials assessment (involves research, field observations and testing of soil, groundwater, construction materials and other items to determine if a site is contaminated from past or present on-site and/or off-site activities, including, at a minimum, undertaking Phase I and Phase II Environmental Site Assessments [“ESAs”] consistent with current American Society for Testing and Materials [“ASTM”] protocols; laboratory testing, analysis and characterization of materials and contaminants; and identifying mitigation measures and preparing remediation plans dependent on the contaminant(s) of concern and the location(s) of the contamination);
- j. Infrastructure (comprises water supply, wastewater, sanitation, energy, roadways, bridges, tunnels, and public transportation);
- k. Solid waste and sanitation services;
- l. Energy;
- m. Transportation, including traffic and parking (traffic flow and operating conditions, parking conditions, goods delivery, and vehicular and pedestrian safety), transit (rail, subway and bus facilities and services), and pedestrians (pedestrian flow and conditions);
- n. Air quality (mobile and stationary source assessment);
- o. Greenhouse gas emissions;
- p. Noise quality (mobile, stationary and construction noise assessment);
- q. Public health;
- r. Neighborhood character;
- s. Environmental justice;
- t. Construction impacts; and
- u. Alternatives (environmental assessment of alternatives to a proposed action).

1.2 Environmental Management Schedule Services

1.2.1 The CONSULTANT shall, not more than fourteen (14) calendar days after the execution of a Work Authorization under this Term Contract for Professional Services, prepare and submit a Environmental Management Schedule for review and acceptance by the OWNER. The Environmental Management Schedule shall include all pertinent Project dates and periods.

1.2.2 The Environmental Management Schedule shall include the Project design completion, any guidelines and milestone dates required by the OWNER, sufficient time for review of documents and submittals by the OWNER, and the date of Final Completion as required by the OWNER.

1.2.3 The Environmental Management Schedule shall include and properly coordinate all dates for performance of services and tasks so that the Project design and the Project construction can be completed in a timely and orderly fashion consistent with the required date of Final Completion.

1.2.4 By reviewing the Environmental Management Schedule, the OWNER does not assume any of the CONSULTANT'S responsibility that the Environmental Management Schedule be coordinated or complete, or for orderly and timely completion of the Project design and the Project construction by the required date of Final Completion, and review and acceptance of the Environmental Management Schedule by the OWNER shall not relieve the CONSULTANT of any of its responsibilities.

1.2.5 The CONSULTANT shall determine and promptly notify the OWNER in writing when it believes adjustments to the Environmental Management Schedule are necessary, but no such adjustments shall be effective unless approved in writing by the OWNER.

1.3 Project Testing Services

1.3.1 The CONSULTANT shall:

- (a) provide all appropriate and advisable Project testing requirements including, but not limited to, geotechnical, asbestos and hazardous substances, structural, chemical, electrical, or mechanical tests and investigations, and construction materials testing;
- (b) prepare scopes of work, including preliminary testing parameters to assist the OWNER in securing all necessary Project testing;
- (c) coordinate all testing and determine timing and order of all testing;
- (d) evaluate all test results; and,
- (e) recommend all necessary and advisable additional Project testing.

1.4 Project Approval Services

1.4.1 As required for the Projects, the CONSULTANT shall:

- (a) promptly assist the OWNER in securing all approvals from governing authorities with jurisdiction over the Projects. Without limitation, the CONSULTANT shall timely assist the OWNER in making application for rezoning, site plan approval, local variances or other approvals, including completion of all necessary applications and supporting documentation; and
- (b) attend any and all meetings required to secure all approvals from governing authorities with jurisdiction over the Projects if so directed by the OWNER.

1.4.2 The CONSULTANT shall obtain Fire Department, Buildings Department, Highway Department

and Authority Having Jurisdiction (AHJ) approval(s) when and where required.

1.5 Quality Control Services

1.5.1 The CONSULTANT shall have a Quality Control program in place as part of the CONSULTANT'S standard office practices. The OWNER may review the CONSULTANT'S Quality Control Program at any time. The Quality Control Program shall apply to all areas of the CONSULTANT'S work, including the review of all drawings prior to submission to the OWNER.

1.6 Project Management System

1.6.1 For projects with an Approved Construction Budget greater than ten million and 00/100 Dollars (\$10,000,000.00), or as directed by the OWNER, the CONSULTANT shall provide all project scheduling deliverables from the current versions of Primavera P6™. The OWNER will provide the CONSULTANT with templates to be used in the generation of the project schedule(s). In addition, the CONSULTANT shall use the current version of Primavera Contract Management™ (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.

1.6.2 The OWNER may direct the CONSULTANT to provide all the Project Management System functions from available web-based and/or Application Service Provider (ASP) system(s) as selected by the OWNER.

ARTICLE 2 – PRESCHEMATIC SERVICES

2.1 Investigation and Analysis

The CONSULTANT shall:

- (a) visit and thoroughly inspect the Project Sites, including any structures and natural or man-made features to be modified;
- (b) familiarize itself with the survey of the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Projects;
- (c) familiarize itself with the OWNER'S layout and design requirements, conceptual design objectives and budgeted Total Project Construction Cost;
- (d) familiarize itself with pertinent Project information and programming needs;
- (e) review and analyze all Project geotechnical, Hazardous Substance, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations, and advise the OWNER of additional testing requirements;
- (f) familiarize itself with, review and analyze local zoning restrictions and requirements including:
 - i. Determining the proposed structures(s) compliance (or noncompliance) with the local municipality's Planning and Zoning Codes;
- (g) gather any other information necessary for a thorough understanding of the Projects; and
- (h) attend the Project kick-off meetings.

If a Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project

site, the CONSULTANT shall also:

- (i) review all available as-built and record drawings, plans and specifications; and
- (j) thoroughly inspect the existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent structural components.
- (k) Complete the necessary Environmental Assessment Form as required and provide additional documentation and screening as needed to complete the requisite review as direct and required by Office of Environmental Affairs (OEA) Environmental Manager for the Proposed Project

2.2 Objectives

Environmental Consulting Services

The services required generally involve providing of environmental consulting services for specified projects. The basic on-call environmental consulting services to be performed under this contract include the following:

- (a) Plan and manage environmental related support services throughout all phases of a project;
- (b) Environmental sampling, testing, permitting and analysis;
- (c) Stormwater design, plan development and inspection;
- (d) Completing site investigations and feasibility studies and reports;
- (e) Conducting risk and exposure assessments;
- (f) Developing remedial alternatives and plans, including treatment system design and operation;
- (g) Environmental compliance audits;
- (h) Outdoor and indoor air quality investigations and reports;
- (i) Landfill investigation and closure design;
- (j) Mold investigation and remedial planning;
- (k) Lead investigation and remedial planning;
- (l) Site environmental assessments/audits, including Phase I Site Assessments and Phase II Environmental Site Assessments;
- (m) Hazardous waste remediation plans;
- (n) Hazardous materials assessment (involves research, field observations and testing to determine if a site is contaminated from past or present on-site and/or off-site activities, and identifying mitigation measures dependent on the contaminant of concern and the location of the contamination);
- (o) Air quality (mobile and stationary source assessment) and greenhouse gas emissions testing, permitting and analysis;
- (p) Prepare detailed cost estimates; and

- (q) Provide construction and schedule administration, including fulltime oversight during abatement/remedial activities with adequately trained and qualified personnel. Construction administration shall also include on-site verification and signature on behalf of OWNER/DASNY, for each waste shipment record/manifest/bill of lading required for all project generated hazardous waste, asbestos waste, and other regulated wastes removed from each project site. This also includes review and approval of all other supporting documents as necessary (e.g. waste profile, LDR form, etc.).

Environmental Management Services

OEA is responsible for the assessment, compliance and coordination of all environmental and historic preservation activities of DASNY for capital financing and construction programs as is required by:

- (i) *State Environmental Quality Review Act (SEQRA)*
- (ii) *Parks, Recreation and Historic Preservation Law (PRHPL)*
- (iii) *State Smart Growth Public Infrastructure Policy Act (SSGPIPA)*
- (iv) *or other local, state, and federal laws and regulations*

OEA classifies each project based on *SEQR* regulations (Type I, Type II or Unlisted), conducts the appropriate level of environmental review for that action and, in consultation with Counsel's Office, makes a *SEQR* determination. A *SEQR* determination is made for all projects which involve:

- (i) *DASNY funding, undertaking, and approving a project at new or existing facilities or structures*
- (ii) *Cosmetic or structural change (interior and exterior renovation or repair)*
- (iii) *Ground disturbance*
- (iv) *Installation of any type of equipment or fixture*
- (v) *Activities that would require discretionary permits from a New York State or Federal Agency (e.g. New York State Department of Environmental Conservation or U. S. Army Corps of Engineers).*

2.3 Preliminary Design and Cost Estimate

The CONSULTANT shall, based upon its activities pursuant to Paragraph 2.1 of this Appendix A:

- (a) establish a basic Project strategy by addressing critical relationships among program elements;
- (b) provide a cost estimate based upon measurement of physical characteristics, using costs appropriate for the type of work and design stage, based upon experience and nationally recognized Construction Specifications Institute (CSI) based estimating systems such as R.S. Means®, or other generally accepted standard cost estimating system acceptable to the OWNER, and including an appropriate design contingency, bidding contingency, contractor's overhead and profit, escalation and trade contractor or construction manager general conditions costs as directed by the OWNER. The estimate shall be prepared using the OWNER provided "Consultant Cost Estimating Workbook", which can be found on DASNY's website at www.dasny.org / Consultants / Design Professional Guide / V. Design Phase / J. Cost Estimates / Consultant Cost Estimating Workbook. Upon prior written approval of the OWNER, the CONSULTANT may prepare the estimate in an alternative format provided the estimate includes at a minimum, all information contained in the OWNER supplied format; and
- (c) select in collaboration with the OWNER the overall solution or combination of solutions that best address the needs of the OWNER.

ARTICLE 3 – SUSTAINABLE DESIGN

3.1 The CONSULTANT shall provide an integrative design approach to deliver a sustainable design for all projects.

The integrative design approach shall be a collaborative and iterative process involving all project team members. The CONSULTANT shall assemble the members of this integrative design project team and shall meet throughout the various design phases and periodically during construction to ensure follow-through. The CONSULTANT, as the leader of the integrative design project team, shall employ strategies, tools and software as needed to optimize building performance. The CONSULTANT shall assess the many attributes of the building design including orientation, solar gain, on-site wind, shading and daylighting/glare design and control to optimize building performance.

For new buildings, additions, and substantial renovations or reconstructions the CONSULTANT shall at a minimum design to LEED Silver standards with the goals under the LEED rating system included in the OWNER’S Project Requirements (OPR) document. The term “substantial renovations/reconstructions” shall mean a capital project in which the scope of work includes work affecting at least two of the primary building systems and the building area is unable to remain occupied due to the nature of the construction for 30 days or more. Primary building systems are defined for purposes of this explanation as: 1) HVAC, 2) Electrical and/or lighting, 3) Exterior Walls and/or Windows, 4) Roof and/or ceilings 5) Plumbing. These projects shall be referred to as DASNY LEED™ projects. DASNY LEED projects include the need for Building Energy Modeling (BEM) intended to measure the predicted building energy performance by analyzing systems together for balance and cost effective design decisions. BEM submissions are to include the base code-compliant model and design runs informing design decisions.

For all other project types (those projects which are not new buildings, additions, and substantial renovations/reconstructions) the CONSULTANT shall integrate sustainable design goals as they relate to the project scope and include these in the OPR or in project meeting notes as applicable. These projects shall be referred to as DASNY Sustainable Projects.

3.1.1. For DASNY LEED™ Projects the CONSULTANT shall:

- (a) Begin the integrated design process at the earliest design stages by defining specific sustainable goals for inclusion in programming, budget and schedule.
- (b) DASNY shall register the project in the LEED™ online Internet based system with the USGBC and grant the CONSULTANT access to the LEED™ online Internet based system. When more than one applicable LEED rating system version is available for registration, DASNY will indicate which LEED rating system will be utilized.
- (c) Lead at least two sustainable design charrettes:
 - (i) one prior to beginning schematic design work which will develop and confirm information in the OPR.
 - (ii) one prior to design development document submission which will develop the Basis of Design (BoD) including what systems/approaches were selected for inclusion and why they were chosen over other systems.
- (d) Evaluate interactions within and between building and natural systems using tools, strategies and software in the conceptual and schematic design phases to inform design decisions.
- (e) Incorporate specific performance objectives into the contract documents to work toward a minimum LEED™ Silver rating.
- (f) At the completion of the 60% and 100% design phases, BEM shall be performed and submitted to confirm the predicted energy performance of the project. Modeling software

shall comply with the requirements of ASHRAE Standard 140. Examples include but are not limited to; DOE 2.1, Visual DOE or eQuest. Modeling runs shall compare the base building design complying with the New York State Energy Conservation Construction Code or by reference ASHRAE Standard 90.1 and the proposed building, showing the energy savings. For applicable projects, the modeling report shall document support of the goals of State Executive Orders that call for Energy Use Intensity (EUI) reduction over certain baselines.

- (g) Utilize life-cycle cost assessment of options to inform design.
 - (h) Include the goal to maximize energy efficiency, along with other defined criteria, when evaluating alternative systems and components.
 - (i) Coordinate and assemble documentation of all applicable LEED™ credits during the design and construction phases of the project in preparation for submission to the USGBC for rating review.
 - (j) Provide guidance to contractors, subcontractors and suppliers on completion and assembly of documents of all LEED™ credits during the construction phase. Interface directly with these entities to facilitate materials selection, establishment of required logs, completion of required documentation, etc. in preparation of submission to the USGBC for certification.
 - (k) Coordinate contract documents with the Commissioning Authority:
 - (i) If Enhanced Cx is included in the project, this coordination includes Cx Authority involvement in specification writing, sequencing review as well as submittal reviews and testing/Cx processes during construction.
 - (ii) If Building Enclosure Cx (BECx) is included in the OPR, the Cx documents must also be coordinated with enclosure performance drawings, details, spec and detail reviews and on-site testing as required to meet established performance goals.
 - (l) Submit project, including all required documentation, to the USGBC for rating using the LEED™ online Internet based system.
 - (i) Note documentation and tracking are part of the base fee while the associated USGBC review fee is a reimbursable expense.
 - (m) Provide all additional information to the USGBC for credit interpretation and reconsideration if additional clarification is requested.
 - (n) In addition, make use of other design tools that are applicable to the project type such as Passive House, Labs21, and ASHRAE Design Guides, to name a few. In any instance where there is a conflict between the design tools noted in this paragraph and LEED™ requirements, LEED™ requirements shall govern. The CONSULTANT shall notify the OWNER of any such conflict and the CONSULTANT shall provide a recommendation as to resolution.
- 3.1.2 For DASNY Sustainable Projects the CONSULTANT shall:
- (a) Begin the integrative design process at the earliest design stages by defining specific sustainable goals for inclusion in programming, budget and schedule.
 - (b) Incorporate specific performance objectives into the contract documents to achieve sustainable attributes.
 - (c) Utilize life-cycle cost assessment of options to inform design.
 - (d) Include the goal to maximize energy efficiency, along with other defined criteria, when evaluating alternative systems and components.

- (e) Coordinate and assemble documentation of all sustainable design attributes.
- (f) Coordinate contract documents with the Commissioning Authority if Commissioning is to be performed.
- (g) In addition, make use of other design tools that are applicable to the project type, including sustainable strategies, tools and software and design guideline tools, including but not limited to Passive House, Labs21, and ASHRAE Design Guides.

3.1.3 In addition to the requirements delineated in 3.1, the CONSULTANT shall demonstrate compliance with the following requirements:

- (a) Executive Orders of NYS calling for energy efficiency achievement, reduction in waste, reduction in toxins or other sustainable goals.
- (b) All NYC Local Laws if the project is located in the jurisdiction of NYC or subject to financial support from NYC.
- (c) Commitments the campus or OWNER entity has obligated themselves to, such as the ACUPCC (American Colleges and University President's Climate Commitment) or other goals for climate neutral planning, achievement of ZNE buildings or increase in renewable energy development.

3.2 The CONSULTANT 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 DASNY LEED™ and DASNY Sustainable projects.

3.3 By the conclusion of schematic design the CONSULTANT shall ascertain and communicate the availability of grants, incentives and other financial remuneration for green, sustainable and energy saving attributes of the project from:

- (a) US Department of Energy (DOE).
- (b) New York State Energy Research and Development Authority (NYSERDA) (Note that NYSEDA needs to be notified of the project prior to the end of schematic design in order to maximize potential incentives.).
- (c) New York State Department of Environmental Conservation (DEC).
- (d) Other entities that may have financial incentives available for sustainable buildings.

3.4 The CONSULTANT shall assist in the application for grants, incentives and other financial remuneration determined by the OWNER to be viable for the project.

A specific scope of services shall be included in each Work Authorization issued under this Term Contract for Professional Services.

Compliance with Education Law Article 145 §7209

No official of this state, or of any city, county, town or village therein, charged with the enforcement of laws, ordinances or regulations shall accept or approve any plans, specifications, or geologic drawings or reports that are not stamped:

- (a) With the seal of an architect or professional engineer or land surveyor or professional geologist licensed in this state and bearing the authorized facsimile of the signature of such architect or professional engineer or land surveyor or professional geologist, or
- (b) With the official seal and authorized facsimile of the signature of a professional engineer or land surveyor or professional geologist not a resident of this state and having no established business in this state, but who is legally qualified to practice as such in his or her own state or country, provided that such person may lawfully practice as such in this state, and provided further that the plans, specifications, or geologic drawings or reports are accompanied by and have attached thereto written authorization issued by the department certifying to such right to practice at such time.

APPENDIX "B"

SUMMARY OF PAYMENTS

A. MAXIMUM AMOUNT PAYABLE

Maximum Amount Payable for all Services required pursuant to this Contract shall be the total of all Projects.

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** form, with accompanying backup. Only said form shall be used for reimbursement of Services.

APPENDIX “C”

APPROVED CLASSIFICATIONS AND RATES
CONTRACT NO. TBD

<u>Technical Classification</u> Firm Name	<u>Direct Hourly Rate</u>
Project Consultant/Engineer/Manager	\$_____

The Multiplier for all direct hourly rates excluding that of the Principal(s) is ____.

On January 1st of each year the CONSULTANT and subconsultants will be allowed a rate increase of two percent (2%) to the Approved Hourly Rates. This increase shall not apply to the Principal rate. A formal amendment to this Contrat is not required provided that the total contract amount does not increase.

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

APPENDIX "D"

ADDITIONAL INSUREDS

The policy shall name the following additional insured:

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

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

- 1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or
 - 2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.
- G. The CONSULTANT specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:
- 1) in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no CONSULTANT, nor any person acting on behalf of said CONSULTANT or subconsultant, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - 2) no CONSULTANT, nor any person on behalf of said CONSULTANT or subconsultant shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;
 - 3) there may be deducted from the amount payable to the CONSULTANT, by the OWNER under this Contract, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Contract; and
 - 4) this Contract may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.
- H. The CONSULTANT specifically agrees to certify its payrolls and keep these certified records on site and available, and provide copies to the OWNER upon request.

2. NONDISCRIMINATION

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

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

and provisions of these nondiscrimination clauses. If said labor union or representative fails or refuses to comply with said request that it furnish such a statement, the CONSULTANT shall promptly notify the State Commissioner of Human Rights of said failure or refusal.

- C. If directed to do so by the Commissioner of Human Rights, the CONSULTANT will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- D. The CONSULTANT will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
- E. The CONSULTANT will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the CONSULTANT's books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Commissioner of Labor of the State of New York for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.
- F. This Contract may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the CONSULTANT has not complied with these nondiscrimination clauses, and the CONSULTANT may be declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the CONSULTANT satisfies the State Commissioner of Human Rights that the CONSULTANT has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the CONSULTANT, and an opportunity has been afforded the CONSULTANT to be heard publicly in accordance with the Executive Law. Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- G. The CONSULTANT will include the provisions of clauses A. through F. in every subcontract or purchase order in such a manner that said provisions will be binding upon each subconsultant or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing said provisions of said subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subconsultant or vendor as a result of said direction by the State Commissioner of Human Rights or the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

5. CONTRACT DEEMED EXECUTORY

The CONSULTANT agrees that the Contract shall be deemed executory to the extent of moneys available from either (i) the proceeds of bonds issued by the OWNER for the Contract, or (ii) moneys made available by the Client for the Contract, or (iii) other non-DASNY 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 CONSULTANT may not use the drawings and specifications for any purpose not relating to the Project without the OWNER's consent. The CONSULTANT may retain such reproductions of drawings and specifications as the CONSULTANT may reasonably require. Upon completion of the Work or any early termination of this Contract, the CONSULTANT 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 CONSULTANT's permission, for any proper purpose including, but not limited to, additions to or completion of the Project.

7. TERMINATION OR SUSPENSION

A. Termination for Cause

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

B. Termination for Convenience or Suspension of Project

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

C. **Payment In Case Of Termination or Suspension of Project**

1. If this Term Contract for Professional Services is terminated by the OWNER pursuant to Paragraph 7A above, no further payment shall be made to the CONSULTANT until completion of the Project. At such time, the CONSULTANT's compensation shall, at the OWNER's option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION** form up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the CONSULTANT's compensation shall be reduced by all costs and damages incurred by the OWNER as a result of the default of the CONSULTANT.
2. If this Term Contract for Professional Services is (i) terminated by the OWNER pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT's compensation shall be calculated on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION** form up to the effective termination or suspension date and reasonable costs associated with termination or suspension. In no event shall the CONSULTANT be entitled to compensation in excess of the Contract Price.
3. If this Term Contract for Professional Services is suspended less than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT specifically agrees that such suspension, interruption or delay of the performance of the services pursuant to this item shall not increase the cost of the Professional Services.
4. Time of completion set forth in the Project Design Schedule may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption or delay; such determination shall be set forth in writing by the OWNER.

8. **SUSPENSION OR ALTERATION**

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

12. COOPERATION

The CONSULTANT shall render any assistance which the OWNER may require with respect to any claim or action in any way relating to the CONSULTANT'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 CONSULTANT for late payment shall be governed by Section 2880 of the Public Authorities Law, to the extent required by law.

14. DEATH OF THE CONSULTANT

If the CONSULTANT is an individual and that CONSULTANT shall die prior to the said completed performance of this Contract, then the payment to the estate of said CONSULTANT, pursuant to this Contract, shall be made as if the project(s) or any part thereof had been suspended or altered on the date of the death of the CONSULTANT. If the CONSULTANT is a partnership and a partner shall die prior to the completed performance of this Contract, the OWNER, in the OWNER's discretion, may deem the project(s) or any part thereof, suspended or altered on the date of said death or any date thereafter which the

OWNER selects, and the payment to the estate of the deceased CONSULTANT or the partnership, pursuant to this Contract, shall be made as if the project(s) or any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by the OWNER. The OWNER shall have the right to the immediate possession of all files of the CONSULTANT relating to the project(s), all plans and specifications in regard to the project(s), and shall have a right to retain the services of another Professional to complete the project(s). If the CONSULTANT is a Professional or other corporation, then this paragraph shall not be applicable.

15. OWNER-CONSULTANT RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

Each CONSULTANT 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 CONSULTANT'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 CONSULTANT shall report on compliance to the OWNER or OWNER's Representative.

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

A. The CONSULTANT agrees, in addition to any other nondiscrimination provision of this Term Contract for Professional Services (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) and Service-Disabled Veteran-Owned Business (SDVOB) participation in the performance of the Work, in such form and substance as herein stated. Failure to demonstrate good faith efforts to meet its CONSULTANT's Workforce Utilization Plan will be a primary consideration for future responsibility determinations, and may lead to liquidated or other appropriate damages for which MBE/WBE/SDVOB goals are not satisfied. The CONSULTANT further agrees to incorporate all Affirmative Action provisions of this Contract in all subcontracts, regardless of tier. NYS Certified M/WBEs can be identified in the directory of certified businesses at <https://ny.newnycontracts.com>. Certified SDVOBs can be identified in the directory of certified businesses located on the New York State Office of General Services website <http://www.ogs.ny.gov/Core/SDVOBA.asp>.

B. The CONSULTANT must submit to the OWNER, and the CONSULTANT's prospective subconsultants must submit to the CONSULTANT, who in turn must submit to the OWNER, 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/SDVOB 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 and Article 17B of the Executive Law and in conformance with the Regulations promulgated by New York State Empire State Development Division of Minority and Women's Business Development and the New York State Office of General Services Division of Service-Disabled Veterans' Business Development, the CONSULTANT 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 Plans

- a. The CONSULTANT shall submit to the OWNER a Statewide Utilization Management Plan (Utilization Plan) for each work authorization issued regardless of dollar value via the NYS Contract System. The Utilization Plan shall list all subconsultants the CONSULTANT intends to use on the contract and indicate which ones are MBE/WBE and SDVOB. The Utilization Plan shall be prepared to achieve the participation goals indicated in the Request for Proposal.
- b. Upon approval of the Utilization Plan, the CONSULTANT shall submit to the OWNER an original signed and notarized Utilization Plan Cover Sheet along with a copy of the approved Utilization Plan.
- c. The OWNER will review the Utilization Plan and will issue to the CONSULTANT a written notice of acceptance or deficiency within 20 days of its receipt. A notice of deficiency shall include (i) the name of any MBE/WBE/SDVOB which is not acceptable for the purpose of complying with the MBE/WBE/SDVOB participation goals and the reasons why it is not acceptable; (ii) elements of the CONSULTANT's Required Services which the OWNER has determined can be reasonably structured by the CONSULTANT to increase the likelihood of participation in the Contract by MBE/WBE/SDVOBs; and (iii) other information which the OWNER determines to be relevant to the Utilization Plan. Although the MBE/WBE/SDVOB goals apply to the entire Term Contract for Professional Services, failure to achieve the required participation by work authorization could impact the receipt of future work authorizations.
- d. The CONSULTANT shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OWNER a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the OWNER to be inadequate, the OWNER shall notify the CONSULTANT and direct the CONSULTANT to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE/SDVOB participation goals. Failure to file the acceptable waiver documentation in a timely manner may be grounds for disqualification of the proposal.
- e. The CONSULTANT who has made good faith efforts to obtain commitments from MBE/WBE/SDVOB subconsultants prior to submitting its Utilization Plan, but was unsuccessful in securing any, or sufficient commitments from MBE/WBE/SDVOB subconsultants, may submit a request for waiver at the same time it submits its Utilization Plan by adding a justification statement in step 3 of the submittal in the NYS Contract System.. Additional documentation of good faith efforts may be required upon review by the OWNER. 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 11.2.2 and 11.2.3, regarding the notice of deficiency and written remedy will apply. In this case, the CONSULTANT may submit a second request for waiver as directed by the OWNER.

- f. If the CONSULTANT 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 MBE/WBE/SDVOB participation goals will be met and/or that the CONSULTANT has failed to document good faith efforts, the OWNER may disqualify the CONSULTANT as being not-responsible.
- g. The CONSULTANT shall make every effort to utilize, in good faith, any MBE/WBE/SDVOB identified within its Utilization Plan, as approved by the OWNER, at least to the extent indicated in the approved Plan.

2) Administration Hearing on Disqualification

- a. If the OWNER disqualifies the CONSULTANT for any of the reasons set forth in 11.2.5 above, the CONSULTANT 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 CONSULTANT.
- 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 MBE/WBE/SVOB participation goals of this Contract, the CONSULTANT 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 thereunder.

The CONSULTANT should use these Guidelines for the preparation of MBE/WBE/SDVOB Utilization Plans and all supporting "good faith efforts" documentation. If the CONSULTANT incurs difficulty in meeting its' MBE/WBE/SDVOB goals, these Guidelines can be utilized to assist the CONSULTANT in preparing the required 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 the CONSULTANT's Request for Waiver to DASNY's Opportunity Programs Group (OPG). If the CONSULTANT fails to adequately document and respond to each item, it may result in a finding of non-compliance.

If the CONSULTANT needs assistance contact DASNY's OPG at (518) 257-3706 (Upstate) or (212) 273-5038 (Downstate).

GUIDELINES

1. Attach a copy of the completed Utilization Plan in accordance with MBE/WBE/SDVOB goals established in the Contract Documents.
2. Submit a written request for a referral list of MBE/WBE's certified by NYS Empire State Development or SDVOB's certified by OGS Division of Service-Disabled Veteran's Business Development by trade or service from DASNY's OPG for subcontracting and procurement opportunities.
3. Provide a record of written solicitations made to certified MBE/WBE/SDVOB's obtained from the NYS Empire State Development directory of certified businesses located at: <https://ny.newnycontracts.com> and the directory of OGS Division of Service-Disabled Veteran's Business Development certified businesses located at: <http://www.ogs.ny.gov/Core/SDVOBA.asp>. Include dates and copies of solicitations made.
4. Contact all the NYS Empire State Development certified MBE/WBEs and OGS Division of Service-Disabled Veteran's Business Development certified SDVOB's posted in the list of interested subcontractors and suppliers posted on the 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 MBE/WBE/SDVOB's 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 NYS certified Minority and Women-Owned Business Enterprises and OGS certified Service-Disabled Veteran-Owned Businesses 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 NYS certified Minority or Women Owned Businesses or OGS certified Service-Disabled Veteran-Owned Businesses.
9. List the efforts undertaken to subdivide portions of the work into smaller components in order to increase NYS certified Minority and Women-Owned Business Enterprise participation or OGS certified Service-Disabled Veteran-Owned Business participation.
10. Did your firm solicit any NYS certified Minority and Women-Owned Business Enterprises or OGS certified Service-Disabled Veteran-Owned Businesses located outside the region where the scope of work is to be performed? If so, what actions were taken to contact and assess the financial ability of those firms to participate?
11. Provide a description of all relevant contract documents, plans or specifications, or documents describing the scope of work which was made available to NYS certified Minority and Women-Owned Business Enterprises or OGS certified Service-Disabled Veteran-Owned Businesses for the purposes of soliciting their bids. Include the dates and manner in which these documents were made available.
12. Were the same subcontract terms and conditions offered to NYS certified Minority and Women-Owned Business Enterprises and OGS certified Service-Disabled Veteran-Owned Businesses as those offered in the ordinary course of business and to other subcontractors?

13. Did your firm engage in direct in person or telephone negotiations with NYS certified MBE/WBE firms or OGS certified SDVOB firms where quotes originally submitted were deemed as too high?
14. Has your firm made payments for work performed by NYS certified Minority and Women-Owned Business Enterprises or OGS certified Service-Disabled Veteran-Owned Businesses in a timely fashion for past work so as to facilitate continued performance by the certified businesses?
15. List any special considerations and/or concerns, which are preventing adequate NYS certified Minority and Women-Owned Business Enterprises or OGS certified Service-Disabled Veteran-Owned Businesses to participate.

4) Compliance Reports and Equal Employment Opportunity Workforce

The CONSULTANT shall submit a completed *Compliance Report* with each **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION** form submitted to the OWNER for each Work Authorization payment regardless of dollar value. The Compliance Report must be signed and notarized or it will not be accepted. *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 CONSULTANT.

The CONSULTANT and all subconsultants shall submit a completed *EEO Workforce Utilization Report* on a quarterly basis to measure the utilization of minorities and women as employees on state contracts.

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

- a. If the CONSULTANT, after making good faith efforts, is unable to comply with the MBE/WBE/SDVOB participation goals, the CONSULTANT may submit a request for a partial or total waiver at the same time it submits its Utilization Plan by adding a justification statement in step 3 of the submittal in the NYS Contract System. Additional documentation of good faith efforts may be required upon review by the OWNER. 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 CONSULTANT's Utilization Plan and compliance reports, determines that the CONSULTANT is failing or refusing to comply with the MBE/WBE/SDVOB participation goals, and no waiver has been issued in regards to such non-compliance, the OWNER may issue a notice of deficiency to the CONSULTANT. The CONSULTANT must respond to the notice to deficiency within seven days of receipt. Such response may include a request for partial or total waiver of MBE/WBE/SDVOB participation goals.

6) Complaints and Arbitration

- a. Subsequent to the award of this Term Contract for Professional Services, if the CONSULTANT submits a request for waiver of MBE/WBE/SDVOB participation goals and the OWNER denies the request or fails to respond in any way within 20 days of receiving it, or if the CONSULTANT has received a written determination from the OWNER that the CONSULTANT is failing or refusing to comply with goals, the CONSULTANT 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 CONSULTANT is failing or refusing to comply with goals.

- b. If the CONSULTANT fails or refuses to comply with goals for participation by MBEs/WBEs and SDVOBs, as established by the Term Contract for Professional Services, 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 CONSULTANT 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 CONSULTANT, 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 Term Contract for Professional Services or refusal of the OWNER to grant a waiver request by the CONSULTANT. 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 CONSULTANT 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 CONSULTANT the estimated amount of the fines and penalties which may be imposed pursuant to this Chapter. Said amounts

shall be the difference between the planned dollar amount of MBE/WBE/SDVOB, subcontract awards and the actual dollar amount of such awards.

- j. In lieu of the complaint procedures set forth in paragraphs 11.7.1 – 11.7.9 of this Article, if the OWNER determines that the CONSULTANT willfully and intentionally fails to comply with the requirements of this Article, the CONSULTANT shall be obligated to pay to the OWNER liquidated damages in an amount not to exceed two hundred thousand dollars (\$200,000) to compensate the OWNER for estimated expenses that would otherwise be incurred by the OWNER to enforce the provisions of this Article and Article 15-A and 17B of the Executive Law, including enforcement proceedings against the CONSULTANT pursuant to Section 316 of the Executive Law. The CONSULTANT shall pay such liquidated damages to the OWNER within sixty (60) days after they are assessed by the OWNER unless prior to the expiration of such sixtieth day, the CONSULTANT shall file a complaint with the Director pursuant to Section 316 of the Executive Law.

7) Subcontracts

The CONSULTANT will include the provisions of Paragraphs 11.4 and 11.7 above in every subcontract, in such manner that such provisions will be binding upon the subconsultant as to work in connection with this Term Contract for Professional Services.

8) Forms

The following forms are to be used in submitting Affirmative Action Plans and are hereby made a part of this Contract: The forms and instructions can be found at <http://www.dasny.org/MWSBES>.

- a. **Statewide Utilization Management Plan:** the CONSULTANT shall submit to the OWNER a Utilization Plan via the New York State (NYS) Contract System within 10 days after the date of the letter of intent. If the MBE/WBE/SDVOB goals are not met, a justification statement should be provided in step 3 of the submittal in the NYS Contract System. Additional documentation of good faith efforts may be required upon review by the OWNER.
- b. **Utilization Plan Cover Sheet:** the CONSULTANT shall submit to the OWNER the original signed and notarized Utilization Plan Cover Sheet along with a printed copy of the approved Utilization Plan from the NYS Contract System. The signed cover sheet must be received by DASNY'S OPG before the contract or any Work Authorization is issued.
- c. **Compliance Report:** the CONSULTANT shall submit a completed, updated report with each Application for Payment request for each individual Work Authorization.
- d. **Quarterly Work Force Utilization Report:** the CONSULTANT shall submit to the OWNER an updated report each quarter during the life of the Contract for themselves and for each subconsultant.
- e. **Permanent Employee Distribution Form:** the CONSULTANT shall submit to the OWNER one completed form prior to the initial contract award. The form is not needed for each separate Work Authorization.
- f. **Standard Equal Employee Opportunity Policy Statement:** the

CONSULTANT shall submit to the OWNER one completed form prior to the initial contract award. The form is not needed for each separate Work Authorization.

18. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE & CONTINUED 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
515 Broadway
Albany, New York 12207
- C. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the OWNER in making an award determination.
- 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 - CONSULTANTS

- A. Officers and employees of the OWNER are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, CONSULTANT, attorney, engineer, inspector or Professional of or for the OWNER authorized on behalf of the OWNER to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the *Public Officers Law* expressly prohibits the CONSULTANT, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the OWNER under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

In addition to the prohibition of Section 73 (5) of the Public Officers Law, DASNY has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the CONSULTANT 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 CONSULTANT 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 CONSULTANT is expected to:
- 1) furnish all goods, materials and services to the OWNER as contractually required and specified,
 - 2) submit complete and accurate reports to the OWNER and its agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from the OWNER or its agents that provides an unfair advantage over a competitor,
 - 4) not engage in any activity or course of conduct that restricts open and fair competition on OWNER-related projects and transactions,
 - 5) not engage in any course of conduct with OWNER employees or its agents that constitutes a conflict of interest, in fact or in appearance, and
 - 6) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.

D. The OWNER encourages the CONSULTANT to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.

E. Although the CONSULTANT may employ relatives of OWNER employees, the OWNER must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The OWNER reserves the right to request that the CONSULTANT modify the work assignment of a relative of an OWNER employee where a conflict of interest, or the appearance thereof, is deemed to exist.

F. The CONSULTANT may hire former employees of the OWNER. However, as a general rule, former employees of the OWNER may neither appear nor practice before the OWNER, nor receive compensation for services rendered on a matter before the OWNER, for a period of *two years* following their separation from service with the OWNER. In addition, former employees of the OWNER are subject to a "*lifetime bar*" from appearing before the OWNER or receiving compensation for services regarding any transaction in which they personally

participated or which was under their active consideration during their tenure with the OWNER.

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

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

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

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

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

L. By entering into this Contract, CONSULTANT certifies, under the penalties of perjury, that CONSULTANT is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. CONSULTANT further certifies that CONSULTANT will not utilize on this Contract any subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

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

20. COOPERATION WITH INVESTIGATIONS

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

The CONSULTANT shall grant the OIA or the Representative the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the

CONSULTANT, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the CONSULTANT, relating to the CONSULTANT. These shall include, but not be limited to: subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; subcontractor, Professional and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. At the OIA's or the Representative's request, said materials shall be provided in a computer readable format, where available. At the request of the OIA or the Representative, the CONSULTANT shall execute such documents, if any, as are necessary to give the OIA or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the CONSULTANT but not currently in the CONSULTANT's physical possession. The CONSULTANT shall not enter into any agreement with a subcontractor, Professional or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The CONSULTANT shall assist the OIA or the Representative in obtaining access to past and present subcontractor, Professional 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, Professionals and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

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

The CONSULTANT shall require each subcontractor to include in all agreements that the subcontractor may hereinafter enter into with any and all subcontractors, Professionals 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 CONSULTANT shall not enter into any subcontract with a subcontractor in connection with the Contract that does not contain such a provision.

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

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

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 subcontracts
- 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the CONSULTANT 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 CONSULTANT’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 CONSULTANT 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 CONSULTANT in accordance with the terms of Appendix E, Article 7.A of this Contract – Termination for Cause.

26. NONCOMPLIANCE

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