

Attachment 1
Form of Engagement Letter

Attention:

Re: Engagement Letter

Dear:

This letter confirms that _____, (the “Firm”), has been appointed to serve on the [Name of Panel/Subpanel] for a term commencing on _____ and ending on _____ subject to the terms and conditions set out in this letter, as may be supplemented from time to time. The term of appointment may be extended for up to three additional six-month periods at the option of the Dormitory Authority of the State of New York (“DASNY”). Further extensions are permitted but will require the consent of each party. The provisions of DASNY’s Request for Proposal for Legal Services, dated _____, 2021 (“RFP”) and the Firm’s responses to the RFP are incorporated herein by reference and form a part of this agreement to the extent consistent with any term specified in this letter, as may be supplemented from time to time.

As a law firm serving on the [Name of Panel/Subpanel], DASNY may seek to retain the Firm’s professional services in connection with one or more matters or transactions relating to DASNY or to one or more of its clients.

A specific engagement to provide services for specific matters or transactions may require, at the discretion of DASNY, the execution by the Firm of a Supplemental Engagement Letter in form and substance satisfactory to DASNY. The Supplemental Engagement Letter will provide:

- (i) the specific matter(s) or transaction(s) to which the Firm is assigned and the scope of work to be provided by the Firm in connection therewith;
- (ii) the fee arrangement applicable to the transaction or matter (e.g., fixed fee, hourly or blended rate);
- (iii) if the fee arrangement is on an hourly basis, an estimate of total amount of fees that will constitute a “not to exceed” amount beyond which all fees are capped;
- (iv) if the fee arrangement is on a fixed fee basis, the fallback fee arrangement in the event the complete scope of work is not completed by the Firm for any reason;
- (v) a description of any contingency associated with DASNY’s obligation to make fee payments to the Firm including, but not limited to, successful completion of the transaction, receipt of consent and payment from the underlying borrower/client and achieving a stated disposition in respect of the matter; and

- (vi) all lawyers who will be assigned by the Firm to work on the particular transaction/matter with an acknowledgement by the Firm that DASNY shall be notified in advance of any change or addition made in terms of coverage during the term of assignment.

The Firm’s charges for the above services will be provided at the following hourly rates:

<u>Title</u>	<u>Standard Rate</u>	<u>DASNY Rate</u>
Partners	\$ _____	\$ _____
Counsel/Associates (with _____ or more years’ experience at time of assignment)	\$ _____	\$ _____
Counsel/Associates (with less than _____ years’ experience at time of assignment)	\$ _____	\$ _____
Paralegals	\$ _____	\$ _____

The above hourly DASNY rates shall apply throughout the engagement where an hourly fee arrangement has either been agreed to or is incorporated within another fee arrangement. Notwithstanding the above hourly rates, the Firm and DASNY may, in writing, agree in a Supplemental Engagement Letter to a different rate schedule for one or more specific matters.

Regardless of the fee arrangement applicable to any specific matter, each bill submitted by the Firm to DASNY shall contain the following information:

- (i) the name and title of each individual providing services for which payment is sought;
- (ii) a detailed description of the services provided by the Firm for which payment is sought;
- (iii) if the services are being billed on an hourly rate, the rate charged, and the time spent by each individual providing services for which payment is sought;
- (iv) the nature and amount of any disbursements for which payment is sought and as requested, supporting documentation; and
- (v) the total fees charged for services performed by minority and woman attorneys reported in accordance with the separate instructions attached as **Appendix “1”** to this Engagement Letter and made a part hereof.

Unless otherwise agreed in writing, all invoices must be submitted: (i) within 30 days of the end of the applicable billing cycle, which shall be monthly; (ii) if payable at closing of a transaction, within [] business days preceding the anticipated closing date; and (iii) if payable after closing of a transaction, within 30 days after the closing of the transaction. DASNY reserves the right to request additional information on each bill submitted by the Firm and/or to require electronic submission of invoices in accordance with then-applicable software requirements. DASNY shall not be charged for time incurred by the Firm in the preparation or submission of invoices.

DASNY agrees that the above fees do not include charges and disbursements that will be billed in addition to your legal services. Acceptable charges and disbursements include long distance telephone charges, postage, copying and printing costs, preparation of electronic transcripts, delivery charges, filing fees, and also reasonable (as determined by DASNY) meal and travel expenses. Charges and disbursements will be billed at their actual cost to the Firm. Unless specifically approved by DASNY in

writing, DASNY will not pay for: (i) travel (including but not limited to, transportation costs, meals, or overnight accommodations) to Board meetings or to places where the Firm has an office; (ii) word processing; (iii) cellphone or other phone data plan expenses or (iv) time incurred in responding to DASNY independent auditor inquiries on outstanding material litigation.

The laws of the State of New York shall govern the interpretation of this Engagement Letter, including all rules or codes of ethics that apply to the provision of services and Part 137 of the Rules of the Chief Administrator of the Court that applies to the resolution of certain fee disputes. In addition, the Firm acknowledges that it has read the Legislative Law, State Finance Law and Executive Law regarding procurement lobbying and that the certifications provided to DASNY, as may be updated from time to time, in connection with this engagement, including Certification regarding the New York State Joint Commission on Public Ethics and Compliance with the Code of Business Ethics, are complete, true and accurate as of the date of this Engagement and each date of an assignment under this engagement.

DASNY acknowledges that your Firm also represents clients other than DASNY (“Firm Clients”) and that your Firm may be asked to represent either: 1) DASNY in a matter in which one or more of the Firm’s Clients is involved but where such Firm Client is represented by counsel other than your Firm; or 2) a Firm Client in a transaction in which DASNY is involved but where DASNY is represented by other counsel. Please be informed that DASNY has no objection to such representation subject to the following conditions: (1) your Firm notifies DASNY in writing that it has determined that such representation is consistent with the requirements of the New York Rules of Professional Conduct, including, Rules 1.7, 1.8 and 1.10; (2) your Firm notifies DASNY in writing of each instance in which it is relying on these provisions and confirms that it has also obtained the consent of the Firm Client; and (3) your Firm agrees in writing that it will not represent a Firm Client against DASNY or DASNY against a Firm Client in connection with any litigation.

The Firm acknowledges that it may be asked by DASNY to work with other law firms empaneled by DASNY, including certified minority and women-owned business enterprise (“MWBE”) and/or service-disabled veteran-owned business enterprise (SDVO Business Enterprise”) Firms, on specific matters or transactions and will cooperate to accommodate such request. The specific tasks and duties to be performed by each Firm, together with the fees to be charged for their respective services, shall be determined by DASNY and the Firms in advance of the commencement of work.

DASNY periodically or upon completion of assignment will review the quality and cost-effectiveness of the services provided by the Firm. This review shall include consideration of the Firm’s adherence to the representations made regarding diversity practices as well as the actual percentage of work performed by MWBE and/or SDVO Business Enterprise professionals assigned to DASNY’s engagement.

The Firm acknowledges that failure by it to (i) adhere to the representations and covenants made in the RFP or under this engagement or (ii) appropriately update information submitted to DASNY in connection with the RFP or this engagement (to keep it from being false, inaccurate, or misleading), may result in DASNY removing the Firm from the [Insert Name of Panel] prior to the expiration of the term of this Engagement Letter. DASNY similarly acknowledges that the Firm, consistent with its obligations under the New York Rules of Professional Conduct, may resign from the panel prior to the expiration of such term.

Appendix “2” is annexed and made a part of this Engagement Letter.

Please acknowledge the terms of this agreement by signing and returning this letter to me by _____, 2021. We look forward to working with you.

Very truly yours,

Attachments

Agreed to and accepted for:

[The Firm]

By: _____

Dated: _____

APPENDIX “1”

**MINORITY, WOMAN and SERVICE-DISABLED VETERAN LEGAL SERVICES
DASNY Reporting Requirements
Updated January 1, 2016**

To encourage and promote opportunities for minority, woman and service-disabled veteran counsel to become involved in DASNY legal services, DASNY Counsel’s Office will be tracking and reporting to senior management legal services rendered at this level, regardless of whether the Firm qualifies or does not qualify as a certified (“MWBE”) and/or service-disabled veteran-owned business enterprise (“SDVO Business Enterprise”) under applicable law. This approach does not alter or change applicable State policy or reporting requirements for MWBE activity. Rather, this approach provides the opportunity for Firms to demonstrate the steps taken internally to promote diversity in the project teams assigned to render legal services to DASNY.

Regardless of the fee arrangement applicable to any specific matter, each invoice for legal services submitted by the Firm to DASNY shall be accompanied by a table indicating the matter or legal services provided, as well as the following: 1) the name of each individual counsel or paraprofessional rendering services; 2) the position of that person and whether the individual has ten or more years of experience; 3) minority (M), woman (W) or service-disabled veteran (SDV) status of the billing attorney, if applicable; 4) the number of hours billed by the applicable party; 5) the percentage of the applicable party’s hours billed represents as compared to the total Firm hours invoiced for the billing period; 6) if the services are being billed on an hourly rate, the regular rate charged for this service and DASNY billing rate, if different; 7) the total dollars billed by the party for the billing period; 8) the percentage which total dollars charged represents when compared to the total chargeable dollars for all parties invoiced for the billing period. In those instances where the Firm is providing services pursuant to a co-counsel, joint venture or other partnering arrangement, the foregoing information shall be provided by each Firm providing legal services to DASNY.

Data shall be reported to DASNY electronically in Excel format (or such other format as shall be specified by DASNY), and submitted to Counsel’s Office with each invoice, c/o Amanda Nazario at ANazario@dasny.org. A sample spreadsheet format is provided below:

Attorney or Para-Professional	Position in Firm (e.g., Shareholder, Partner, Associate)	10 or More Years Exp (Y/N)	(M), (W), (SDV) or N/A	Billed Hours	% Total Hours Billed	Regular Billing Rate	DASNY Billing Rate	Total Billed	% Total Billed

APPENDIX “2”

Continuing Integrity

- A. The Firm shall at all times during the Engagement Letter term remain responsible. The Firm agrees, if requested by the President of DASNY or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- B. The President of DASNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Engagement Letter, at any time, when he or she discovers information that calls into question the responsibility of the Firm. In the event of such suspension, the Firm will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Firm must comply with the terms of the suspension order. Engagement Letter activity may resume at such time as the President of DASNY or his or her designee issues a written notice authorizing a resumption of performance under the Engagement Letter.
- C. Notwithstanding any other provision of this Engagement Letter, upon written notice to the Firm, and a reasonable opportunity to be heard with the appropriate DASNY officials or staff, the engagement may be terminated by the President of DASNY or his or her designee at the Firm’s expense where the Firm is determined by the President of DASNY or his or her designee to be non-responsible. In such event, the President of DASNY 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.

Iran Divestment

- A. By entering into this Engagement Letter, the Firm certifies, under the penalties of perjury, that the Firm is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. The Firm further certifies that the Firm will not utilize on this Engagement Letter any firm that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.
- B. During the term of this engagement, should DASNY receive information that a person (as defined in New York State Finance Law §165-a) is in violation of the above-referenced certifications, DASNY 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 DASNY 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 Firm in default.