

[ ]

TERM CONTRACT NO.: [ ]

## CONTRACT

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

**WHEREAS**, DASNY has selected the CONSULTANT to serve as Swap Advisor as further described in each Engagement Letter; and

**WHEREAS**, DASNY and the CONSULTANT have agreed upon methods for determining compensation for services including but not limited to billing rates to be utilized in conjunction with the appropriate hours to calculate compensation for services requested for each Project;

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

### **ARTICLE I: TERM OF CONTRACT**

The Term of this Contract for the assignment of Engagement Letters shall be from TBD ] through [ TBD ]. DASNY may, in its sole discretion, extend the Term of this Contract and issue Engagement Letters for an extended period of one (1) year, to no later than TBD ]. The CONSULTANT shall continue to render services for each Engagement Letter it is assigned within the term of this Contract and any such extension(s) until the completion of said Engagement Letter(s) unless DASNY 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 Engagement Letter is issued.

### **ARTICLE II: ADDITIONAL SERVICES**

DASNY 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 DASNY in writing. DASNY shall determine whether or not the work is in fact beyond the scope of this Contract and is considered Extra Work. If DASNY determines that the work is Extra Work, this Contract shall be modified to equitably reflect the cost of said Extra Work. Payment shall be made in accordance with Article VI.C.

### **ARTICLE IV – M/WBE CONTRACT GOALS – NOT APPLICABLE**

The N.Y.S. certified Minority and Women-owned Business Enterprise (M/WBE) goals for this contract are thirty (30) percent of the total amount of fees paid by DASNY. The CONSULTANT may reach the thirty (30) percent goal in two ways: (1) CONSULTANT is N.Y.S. certified M/WBE firm and/or (2) CONSULTANT has an M/WBE joint venture, other strategic partnership or subcontracting relationship that can account for a percentage of the consulting fees.

## **ARTICLE V: CONSULTANTS**

- A. DASNY 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. DASNY 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 DASNY 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 DASNY.
- 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 DASNY for approval. DASNY 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.1. The fees of any subconsultants retained by the CONSULTANT for services required under Article III shall be paid as outlined in Article VI.A.2.
- 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 DASNY. The CONSULTANT shall make said payment no later than seven (7) calendar days from receipt of payment from DASNY.
- F. All services rendered by the CONSULTANT for each Project shall be performed by or under the immediate supervision of experienced professional(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**

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

1. DASNY shall compensate the CONSULTANT for Required Services rendered for each Engagement Letter in one (1) or more of the following ways:

### **Negotiated Basis:**

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

**Time Basis:**

DASNY shall pay the CONSULTANT at the rates set forth in Appendix “C” entitled **APPROVED CLASSIFICATIONS AND RATES** which is attached to and made a part hereof, and in accordance with the Provisions for Payment contained in each Engagement Letter issued under this Term Contract for Professional Services.

2. DASNY and the CONSULTANT shall agree in writing prior to the CONSULTANT’s performance of Extra Services whether the Extra Services will be performed on a negotiated lump-sum basis or an hourly-rate basis. DASNY shall compensate the CONSULTANT for Extra Services
  1. if rendered on a lump sum basis, in an amount mutually agreed to in writing by DASNY and the CONSULTANT prior to the performance of such services; and
  2. if rendered on an hourly-rate basis, at the actual hourly rates times set forth in the Appendix “C”.
  3. Specific Approved Reimbursable Expenses.
3. Payments shall be based on valid invoices submitted by the CONSULTANT and approved by DASNY with individual timesheets or a summary report thereof as may be required by DASNY, and other appropriate supporting documentation. Timesheets and/or payroll registers shall show the names, position classifications and hours worked for all personnel performing services during the payment period. DASNY may make progress payments to the CONSULTANT based on an agreed upon percentage of work completed or other milestones as agreed upon between DASNY and the CONSULTANT.
4. The CONSULTANT is required to submit payment requests to DASNY, on behalf of subconsultants, within thirty (30) days of receiving approvable subconsultant invoices.

A. **Reimbursables**

Payment for approved Reimbursables for a Engagement Letter pursuant to Article VII shall be made monthly on the basis of invoices submitted by the CONSULTANT and approved by DASNY.

B. **Additional Services and Extra Work**

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

1. Negotiated Lump Sum; or
2. Actual Expense based on the specific hours charged by the CONSULTANT times the approved hourly rates contained in Appendix “C”.
  - a. 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 CONSULTANT's Approved Subconsultants, as approved by DASNY. 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 DASNY, 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 when the travel occurs;

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.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)); and

B. reproductions and postage;

C. overtime work requiring higher than regular rates when authorized in advance by DASNY;

**ARTICLE VIII: WITHHOLDING OF PAYMENTS**

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

A. to assure payment of just claims of any persons supplying labor or materials for the Work;

B. to protect DASNY from loss due to defective Work not remedied;

C. to protect DASNY or other such entities as identified by DASNY 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;

D. to assure payment of fines and penalties which may be imposed on the CONSULTANT pursuant to the provisions of this Contract.

**ARTICLE IX: FINAL PAYMENT AND RELEASE**

Final payment shall be made to the CONSULTANT upon satisfactory completion and acceptance by DASNY 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 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 DASNY 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: DASNY's PROCEDURE**

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

#### **ARTICLE XI: INSURANCE**

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

- (i) Workers' Compensation Law Requirements
  - (a) Workers' Compensation (including occupational disease) and Employer's Liability Insurance. Full New York State (NYS) Workers' Compensation and Employer's Liability coverage shall be provided as evidenced by **ONE** of the following (**ACORD certificates are not acceptable**):
    - (1) C-105.2 (September 2015, or most current version) - Certificate of NYS Workers Compensation Insurance Coverage. The insurance carrier will provide a completed form as evidence of in-force coverage.
    - (2) U-26.3- (or any replacement) NYS Insurance Fund Certificate of Workers Compensation Coverage. The NYS Insurance Fund will provide a completed form as evidence of in-force coverage.
    - (3) GSI-105.2 (2/02 or most current version) - -Certificate of Participation in Workers Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator shall provide a completed form.
    - (4) SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Worker's Compensation Board's Self-Insurance Office or The 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.
- (ii) 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 CONSULTANT Services. 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 \$4,000,000; the personal and advertising injury 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) Additional Insured status for DASNY.
  - (b) Independent CONSULTANTS/subCONSULTANTS.
  - (c) Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in this Contract for Services, and covering tort liability of another assumed in a contract.
  - (d) Defense and/or indemnification obligations, including obligations assumed under this Contract for CONSULTANT Services.
  - (e) Cross liability for additional insureds.
  - (f) Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
  - (g) Policy or policies must be written or endorsed to be primary and non-contributory as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by DASNY. Any other insurance maintained by DASNY shall be excess of and shall not contribute with the CONSULTANT’s or its SubCONSULTANT’s insurance, regardless of the “other

insurance” clause contained in DASNY’s own policy of insurance.

B. General Insurance Requirements

- (i) Unless otherwise required, each insurance policy except the CONSULTANT’s errors and omissions 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 DASNY in its sole and exclusive discretion;
  - (b) shall be written on an occurrence basis except where this Contract for CONSULTANT Services explicitly allows otherwise; and,
  - (c) shall be evidenced by a certificate of insurance acceptable to the DASNY 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 DASNY.
- (ii) Should the CONSULTANT fail to provide or maintain any insurance required by this Contract for CONSULTANT Services, the DASNY may, after providing written notice to the CONSULTANT, purchase insurance covering the CONSULTANT and charge back such purchase to the CONSULTANT.
- (iii) At any time that the coverage provisions and limits on the policies required do not meet the provisions and limits set forth therein, The CONSULTANT shall immediately cease work. The CONSULTANT shall not resume work until authorized to do so by the DASNY.
- (iv) Neither the procurement nor the maintenance of any type of insurance by DASNY 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.
- (v) 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 Certificates of Insurance on file and produce them upon the demand of the DASNY.
- (vi) 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 DASNY 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.
- (vii) Notwithstanding any other provision of this Article, the DASNY may require The CONSULTANT to provide, at the expense of the DASNY, any other form or limit of insurance necessary to secure the interests of the DASNY.

C. Certificates Of Insurance

Certificates of Insurance must be submitted by The CONSULTANT to DASNY or their designee and approved by DASNY or their designee prior to the commencement of the Work. CONSULTANT shall provide (30) days written notice to the DASNY 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 DASNY, The CONSULTANT shall furnish DASNY with certified copies of each policy.

D. Effect of Insurance

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

E. Priority

Except for Workers Compensation, Employer's Liability, and Errors and Omissions insurance, insurance coverage (including any deductible or self-insured retention) required from persons or entities other than the DASNY or the DASNY's Related Parties shall be deemed primary to any coverage provided by the DASNY or the DASNY's Related Parties.

F. Errors and Omissions Insurance with a limit of not less than Two Million Dollars (\$2,000,000) and subject to a deductible, or self-insured retention, of not more than One Hundred Thousand Dollars (\$100,000.00) per claim in the aggregate.

G.. A Certificate of Insurance, indicating the Program, must be submitted, and approved by DASNY prior to the commencement of work. Upon request, the Proposer shall furnish DASNY with certified copies of each policy.

**ARTICLE XII: INDEMNIFICATION**

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

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



A. **Intellectual Property Indemnity**

To the fullest extent permitted by law, the CONSULTANT shall defend, protect, hold harmless, and indemnify DASNY and DASNY's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to processes required by DASNY in writing. If the CONSULTANT has reason to believe the use of a required process is an infringement of a patent, the CONSULTANT shall be responsible for such loss unless such information is promptly given to DASNY.

B. **Non-Exclusivity of DASNY's Remedies**

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

C. **Waiver Of Damages**

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

D.

E.

F.

G. **Interest**

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

**ARTICLE XIII: DASNY'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, including records of consultants and subconsultants. DASNY or DASNY'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. Any item not supported due to the unavailability of said records shall, at the discretion of DASNY, be disallowed. If payment has already been made, amounts disallowed shall be refunded by the CONSULTANT to DASNY upon demand.

**ARTICLE XIV: REGISTERED MUNICIPAL ADVISOR**

The CONSULTANT is a registered municipal advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If DASNY has designated CONSULTANT as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), then services provided pursuant to such designation shall be the services described in ARTICLE XV, Section 10 hereto, subject to any limitations provided herein. CONSULTANT shall not be responsible for, or have any liability in connection with, verifying that CONSULTANT is independent from any other party seeking to rely on the IRMA exemption (as such independent status is required pursuant to the IRMA exemption, as interpreted from time to time by the SEC). DASNY acknowledges and agrees that

any reference to CONSULTANT, its personnel and its role as IRMA, including in the written representation of DASNY required under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by CONSULTANT. DASNY further agrees not to represent that CONSULTANT is DASNY's IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, outside of the scope of services without CONSULTANT's prior written consent.

MSRB Rules require that municipal advisors make written disclosures to their clients of all material conflicts of interest, certain legal or disciplinary events and certain regulatory requirements. Such disclosures are provided in CONSULTANT's Disclosure Statement delivered to DASNY together with this ARTICLE XIV or upon being engaged to represent DASNY on a matter.

#### **ARTICLE XV: QUALIFIED INDEPENDENT REPRESENTATIVE**

The Consultant has agreed to act as a qualified independent representative to DASNY with respect to Swap Transactions subject to ISDA master agreements entered into or to be entered into between DASNY and Swap Dealers or Major Swap Participants in accordance with relevant provisions of Title VNO. 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and relevant CFTC Regulations.

#### **RECITALS**

- A. DASNY intends to amend its existing ISDA master agreements with Swap Dealers or Major Swap Participants to comply with requirements of the Dodd-Frank Act, including, pursuant to Section 731 of the Dodd-Frank Act, the Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties (the "Business Conduct Standards");
- B. DASNY is a Special Entity in accordance with CFTC Regulation §23.401(c)(2);
- C. Under CFTC Regulation §23.450(b)(1), Swap Dealers and Major Swap Participants that offer to enter into or enter into swaps with Special Entities, such as DASNY, will need to have a reasonable basis to believe that the Special Entity has a representative with specified qualifications;
- D. In order to continue to be able to enter into swaps with Swap Dealers and Major Swap Participants (including the termination in whole or in part and the novation of existing Swap Transactions) DASNY wishes to designate the Consultant as DASNY's representative with respect to certain Swap Transactions in accordance with the requirements of the Dodd-Frank Act, subject to the compensation provisions in the Swap Advisory Contract;
- E. The Consultant represents to DASNY that it meets the qualifications of a representative as set forth in CFTC Regulation §23.450(b)(1) with respect to Swap Transactions and is willing to serve as DASNY's representative for Swap Transactions.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereto agree as follows:

#### **Section 1 Definitions**

The following terms shall have the following meanings when used in this ARTICLE XV:

"Associated Person" means, with respect to a Swap Dealer or Major Swap Participant, an associated person as defined in Section 1a(4) of the Commodity Exchange Act.

"CFTC" means the U.S. Commodity Futures Trading Commission.

“CFTC Regulations” means the rules, regulations, orders and interpretations published or issued by the CFTC.

“Commodity Exchange Act” means the Commodity Exchange Act, as amended.

“Existing Swap Transactions” means the transactions and ISDA master agreements provided in Section 10 hereto.

“Existing Major Swap Participant” means any of the counterparties in Section 10 hereto which qualify as a Major Swap Participant as defined herein.

“Existing Swap Dealer” means any of the counterparties in Section 10 hereto which qualify as a Swap Dealer as defined herein.

“Independent” shall have the meaning provided in CFTC Regulation §23.450(c) for a representative to be deemed to be independent of the Swap Dealer or Major Swap Participant.

“Local Business Day” means a day on which commercial banks are open for general business in New York City.

“Major Swap Participant” shall have the meaning provided for such term in CFTC Regulation §23.401 and shall be a counterparty to a Swap Transaction with DASNY that has represented in writing to DASNY that it is registered with the CFTC as a “major swap participant” as defined in the Commodity Exchange Act and relevant CFTC Regulations thereunder.

“Principal Relationship” shall have the meaning provided in CFTC Regulation §23.450(a)(1).

“Special Entity” means a “special entity” as defined in CFTC Regulation §23.401.

“Statutory Disqualification” shall have the meaning described in CFTC Regulation §23.450(a)(2).

“Swap” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation §1.3(xxx).

“Swap Dealer” shall have the meaning provided for such term in CFTC Regulation §23.401 and shall be a counterparty to a Swap Transaction with DASNY that has represented in writing to DASNY that it is registered with the CFTC as a “swap dealer” as defined in the Commodity Exchange Act and relevant CFTC Regulations thereunder.

“Swap Transaction” means any transaction (including any amendment, termination (in whole or in part) or transfer with respect to an existing transaction) for which the Consultant is identified in writing by DASNY as DASNY’s qualified independent representative with respect to such transaction and such transaction is a Swap and is subject to an ISDA master agreement between DASNY and the other party to such ISDA master agreement and which may be an Existing Swap Transaction or a new swap transaction and which is an interest rate swap transaction, basis swap transaction, forward rate transaction, interest rate option transaction, cap transaction, floor transaction, collar transaction, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

## **Section 2**

### **Basic Representations of the Consultant**

The Consultant makes the following representations (which representations are deemed to be repeated on each date on which this Amendment is in effect):

- (i) Status. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

- (No. 2) Powers. It has the power to execute this Contract and any other documentation relating to this Contract to which it is a party, to deliver this Contract and any other documentation relating to this Contract that is required by this Contract to deliver and to perform its obligations under this Contract and has taken all necessary action and made all necessary determinations and findings to authorize such execution, delivery and performance.
- (No. 2i) No Violation or Conflict. Such execution, delivery and performance do not conflict with any law applicable to it, any provision of its constitutional or organizational documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (iv) Consents. All governmental and other consents that are required to have been obtained by it with respect to this Contract have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (iii) Obligations Binding. Its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

### **Section 3 Additional Representations of the Consultant**

The Consultant makes the following additional representations with respect to the Existing Swap Transactions, the Existing Swap Dealers and Existing Major Swap Participants and any new Swap Transactions, new Swap Dealers and new Major Swap Participants (which additional representations will be deemed to be repeated by it on each date on which this Contract is in effect):

- (i) it has sufficient knowledge to evaluate Swap Transactions and the risks involved with Swap Transactions;
- (No. 2) it is not subject to a Statutory Disqualification;
- (No. 2i) it is Independent of the Swap Dealer or Major Swap Participant;
- (iv) it hereby undertakes a duty to act in the best interests of DASNY when providing any advice to DASNY or preparing any information for DASNY or taking any actions on behalf of DASNY with respect to Swap Transactions;
- (v) it agrees to make appropriate and timely disclosures to DASNY, including, without limitation, disclosures of all material conflicts of interest that could reasonably affect the judgment or decision making of the Consultant with respect to its obligations to DASNY hereunder and the Consultant agrees to establish, maintain and comply with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;
- (iv) it shall evaluate, consistent with any guidelines provided by DASNY or DASNY's legal counsel, fair pricing and appropriateness of any Swap Transaction;
- (vNo. 2) it expects that it will be subject to restrictions on certain political contributions imposed by the CFTC, the Securities and Exchange Commission, or a self-regulatory organization subject to the jurisdiction of the CFTC or the Securities and Exchange Commission once those restrictions are promulgated and effective and it will comply with such restrictions;

- (vNo. 2i) it has put policies and procedures in place reasonably designed to ensure that it satisfies and continues to satisfy clauses (i) through and including (vNo. 2) above; and
- (v) it meets the independence test in CFTC Regulation §23.450(c) as further specified in Section 4(2) below.

**Section 4  
Agreements**

- (1) The Consultant agrees that, so long as it has or may have any obligation under this Contract:
  - A. It shall exercise independent judgment in evaluating any recommendations of the Swap Dealer or Major Swap Participant with regard to a Swap Transaction or trading strategy involving a Swap Transaction that are presented to it.
  - B. It shall notify DASNY promptly in writing (i) of any failure of a representation made by the Consultant in Section 3 hereof to be true and correct and (No. 2) if any representation made by the Consultant in Section 3 is misleading in any material respect.
- (2) The Consultant agrees that from the time it is designated by DASNY as a qualified independent representative of DASNY with respect to a Swap Transaction until the completion of such Swap Transaction or the decision by DASNY not to complete such Swap Transaction, with a Swap Dealer or a Major Swap Participant, each of the following will be true and correct:
  - (i) The Consultant is not and, within one year of representing DASNY in connection with any Swap Transaction, was not an Associated Person of the Swap Dealer or Major Swap Participant.
- (No. 2) There is no Principal Relationship between the Consultant and the Swap Dealer or Major Swap Participant.
- (No. 2i) The Consultant will make timely and effective disclosures to DASNY of all material conflicts of interest that could reasonably affect the judgment or decision making of the Consultant with respect to its obligations to DASNY hereunder and the Consultant agrees to maintain and comply with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest.
- (iv) The Consultant agrees that it is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with the Swap Dealer or Major Swap Participant.
- (v) The Consultant agrees that it was not referred, recommended or introduced to DASNY by the Swap Dealer or Major Swap Participant within one year of the Swap Advisor's representation of DASNY with respect to the Swap Transaction.

**Section 5  
Additional Agreements and Representations**

The Consultant represents to DASNY that on the date hereof the representations and agreements in Sections 2, 3 and 4 are true and correct with respect to the Existing Swap Transactions and with respect to each of the counterparties in Section 10 hereto (as if such counterparties were Existing Major Swap Participants and/or Existing Swap Dealers). To the extent DASNY designates the Consultant as its representative with respect to one or more Swap Transactions, the Consultant agrees to confirm to DASNY that the representations and agreements in Sections 2, 3 and 4 are true and correct and that the Consultant

will act in the best interests of DASNY in providing advice to DASNY pursuant to the terms of the Swap Advisory Contract. In rendering such advice, the Consultant shall exercise independent judgment in evaluating any recommendations of the Swap Dealer or Major Swap Participant with regard to a Swap Transaction or trading strategy involving a Swap Transaction that are presented to it.

## **Section 6 Miscellaneous**

- A. Entire Agreement. Each of the parties acknowledges that in entering into this Contract it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Contract).
- B. Amendments. An amendment, modification or waiver in respect of this Contract will only be effective if in writing (including a writing evidenced by a facsimile transmission, e-mail transmission or by any other means acceptable to the parties) and executed by each of the parties or confirmed by an exchange of e-mail or by any other means acceptable to the parties.
- C. Counterparts. This Contract (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, e-mail or by any other means acceptable to the parties), each of which will be deemed an original.
- D. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect of this Contract will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- E. Headings. The headings used in this ARTICLE XV are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Contract.

## **Section 7 Notices**

- A. Effectiveness. Any notice or other communication in respect of this Contract may be given in any manner described below, or in any other manner agreed by the parties, to the address or number or in accordance with e-mail or other details provided in paragraph C of this Section and will be deemed effective as indicated:
  - (i) if in writing and delivered in person or by courier, on the date it is delivered;
  - (No. 2) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
  - (No. 2i) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered;
  - (iv) if sent by e-mail, on the date it is received by a responsible employee of the recipient; or
  - (v) if sent by any other means agreed by the parties, on the date determined in accordance with the relevant agreement of the parties;

unless the date of that delivery or that receipt, as applicable, is not a Local Business Day or that communication is delivered or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

B. Change of Details. Either party may by notice to the other change the address, facsimile number, e-mail or other notice details at which notices or other communications are to be given to it.

C. *Notice Information.*

[CONSULTANT NAME AND ADDRESS]

DASNY  
515 Broadway  
Albany, NY 12207  
Attn: Matt Bergin  
(518) 257-3140  
[mbergin@dasny.org](mailto:mbergin@dasny.org)

### **Section 8 Jurisdiction**

- A. Jurisdiction. With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Contract (“Proceedings”), each party:
- (i) irrevocably submits, to the fullest extent permitted by applicable law, to the exclusive jurisdiction of the courts of the State of New York and the United State District Court located in the City of Albany in the State of New York; and
  - (No. 2) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

### **Section 9 Non-exclusivity**

DASNY reserves the right to designate another party or other parties as a qualified independent representative to DASNY with respect to Swaps whether or not the Consultant acts as a qualified independent representative to DASNY with respect to other Swaps.

### **ARTICLE XVI: CONTINUING INTEGRITY**

The CONSULTANT shall at all times during the Contract Term remain responsive and responsible. The CONSULTANT shall also monitor each sub-consultant for responsiveness and responsibility at all times during the Contract Term. The CONSULTANT 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. The CONSULTANT shall immediately notify DASNY of any material or adverse information pertaining to the CONSULTANT or any sub-consultant, regardless of tier.

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 Contract, at any time, when he or she discovers information that calls into 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. Insurance Services 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 this Contract.

Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate DASNY officials or staff, the Contract may be terminated by the President of DASNY or his or her designee at the CONSULTANT's expense where the CONSULTANT 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 the breach.

In selecting a sub-CONSULTANT, the CONSULTANT shall consider whether the proposed sub-CONSULTANT appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The CONSULTANT shall not subcontract with any entity on the "List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract", published by the NYS Department of Labor Bureau of Public Work. The CONSULTANT shall not subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The CONSULTANT shall not subcontract with any entity on the list of "Non- Responsible Entities" maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

In selecting a sub-CONSULTANT, the CONSULTANT shall also consider whether the proposed sub-CONSULTANT has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Insurance Services under this Contract.



Section 10

LIST OF EXISTING SWAP TRANSACTIONS  
(as of August 15, 2021)  
DASNY CICI NUMBER: 549300C8XO7EXTX2XU71

City University System Consolidated Revenue Bonds, Series 2003 ("CUNY")

2003 Refunded Bonds		Series 2008					
<u>Series Reference</u>	<u>Associated Bonds</u>	<u>Effective Date</u>	<u>Maturity Date</u>	<u>Current Notional</u>	<u>Confirm Number</u>	<u>Counterparty</u>	
CUNY 2003 3-D	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$14,644,126.00	32807	Citibank, N.A., New York	
CUNY 2003 3-E	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$14,644,126.00	32811	Citibank, N.A., New York	
CUNY 2003 3-F	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$14,689,716.00	32817	Citibank, N.A., New York	
CUNY 2003B 5-1	CUNY 5th Res 2008C	4/10/2003	1/1/2025	\$30,154,495.00	32809	Citibank, N.A., New York	
CUNY 2003B 5-2	CUNY 5th Res 2008D	4/10/2003	1/1/2025	\$30,163,613.00	32818	Citibank, N.A., New York	
CUNY 2003B 5-3	CUNY 5th Res 2008C	4/10/2003	1/1/2031	\$13,969,364.00	32812	Citibank, N.A., New York	
CUNY 2003B 5-4	CUNY 5th Res 2008D	4/10/2003	1/1/2031	\$18,227,647.00	32810	Citibank, N.A., New York	
CUNY 2003 3-D	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$8,501,958.00	1308664	Merrill Lynch Derivative Products AG	
CUNY 2003 3-E	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$8,501,958.00	1308666	Merrill Lynch Derivative Products AG	
CUNY 2003 3-F	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$8,528,428.00	1308704	Merrill Lynch Derivative Products AG	
CUNY 2003B 5-1	CUNY 5th Res 2008C	4/10/2003	1/1/2025	\$17,506,835.00	1308673	Merrill Lynch Derivative Products AG	
CUNY 2003B 5-2	CUNY 5th Res 2008D	4/10/2003	1/1/2025	\$17,512,129.00	1308705	Merrill Lynch Derivative Products AG	
CUNY 2003B 5-3	CUNY 5th Res 2008C	4/10/2003	1/1/2031	\$8,110,212.00	1308669	Merrill Lynch Derivative Products AG	
CUNY 2003B 5-4	CUNY 5th Res 2008D	4/10/2003	1/1/2031	\$10,582,451.00	1308678	Merrill Lynch Derivative Products AG	
CUNY 2003 3-D	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$8,501,958.00	7404858	UBS AG, Stamford Branch	
CUNY 2003 3-E	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$8,501,958.00	7404859	UBS AG, Stamford Branch	
CUNY 2003 3-F	CUNY 5th Res 2008C	4/10/2003	7/1/2031	\$8,528,428.00	7404856	UBS AG, Stamford Branch	
CUNY 2003B 5-1	CUNY 5th Res 2008C	4/10/2003	1/1/2025	\$17,506,835.00	7404853	UBS AG, Stamford Branch	
CUNY 2003B 5-2	CUNY 5th Res 2008D	4/10/2003	1/1/2025	\$17,512,129.00	7404852	UBS AG, Stamford Branch	
CUNY 2003B 5-3	CUNY 5th Res 2008C	4/10/2003	1/1/2031	\$8,110,212.00	7404854	UBS AG, Stamford Branch	
CUNY 2003B 5-4	CUNY 5th Res 2008D	4/10/2003	1/1/2031	\$10,582,451.00	7404850	UBS AG, Stamford Branch	
				<u>\$294,981,029.00</u>			

Mental Health Services Facilities Improvement Revenue Bonds, Series 2003D-2 ("MH")

<u>Associated Bonds</u>	<u>Effective Date</u>	<u>Maturity Date</u>	<u>Current Notional</u>	<u>Confirm Number</u>	<u>Counterparty</u>
MH 2003 D-2	7/15/2003	2/15/2031	\$79,341,963.00	640383601	Goldman Sachs Mitsui Marine Derivative Products, L.P.
MH 2003 D-2	7/15/2003	2/15/2031	<u>\$16,058,037.00</u>	AUBT8	Morgan Stanley Capital Services Inc.
			<u>\$95,400,000.00</u>		

Court Facilities Lease Revenue Bonds, (The City of New York Issue), Series 2005B ("CTS")

<u>Associated Bonds</u>	<u>Effective Date</u>	<u>Maturity Date</u>	<u>Current Notional</u>	<u>Confirm Number</u>	<u>Counterparty</u>
CTS 2005B	6/15/2005	5/15/2039	\$80,680,000.00	646076001	Goldman Sachs Mitsui Marine Derivative Products, L.P.
CTS 2005B	6/15/2005	5/15/2039	<u>\$44,820,000.00</u>	500085006433	JPMorgan Chase Bank, N.A.
			<u>\$125,500,000.00</u>		

Personal Income Tax Revenue Refunding Bonds (General Purpose), Series 2019C ("PIT")

<u>Associated Bonds</u>	<u>Effective Date</u>	<u>Maturity Date</u>	<u>Current Notional</u>	<u>Confirm Number</u>	<u>Counterparty</u>
PIT 2019C	10/30/2019	3/15/2033	\$77,800,000.00	6900017780939	JPMorgan Chase Bank, N.A.

**ARTICLE XVII: ASSIGNMENT**

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

**ARTICLE XVIII: APPENDIX "E" ADDITIONAL ITEMS**

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

**SIGNATURES**

**IN WITNESS WHEREOF**, DASNY has executed this Contract on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

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

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**IN WITNESS WHEREOF**, the CONSULTANT has caused this Contract to be signed by its duly authorized officer on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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.

**NEW YORK STATE ACKNOWLEDGEMENT – DASNY**

State of New York    )  
                                  ) SS:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared:

\_\_\_\_\_  
**(NAME)**

personally known to me 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.

\_\_\_\_\_  
**Signature of Notary**

*Stamp or seal containing printed name, county of qualification of notary public and expiration date of notary commission*

**NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant**

State of New York    )  
                                  ) SS:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared:

\_\_\_\_\_  
**(NAME)**

personally known to me 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.

\_\_\_\_\_  
**Signature of Notary**

*Stamp or seal containing printed name, county of qualification of notary public and expiration date of notary commission*

## APPENDIX "A"

### SCOPE OF SERVICES

DASNY expects that the swap advisor may provide services consisting of the following:

- Provide ongoing assistance and advice regarding Dodd Frank compliance and other regulatory requirements;
- Provide ongoing assistance and advice regarding the mark-to-market value of the swaps which have been executed by DASNY;
- Advise and assist in the implementation of any negotiated or competitive process for the procurement, termination, or modification of swaps;
- Provide advice on the advisability and efficiency regarding swaps that DASNY may contemplate;
- Provide an independent finding that the swap terms and conditions of a DASNY swap reflects a fair market value as of the date of its execution as required pursuant to the provisions of Article 5-D of the State Finance Law;
- Advise and assist in the fee negotiation and price negotiation of swap providers in connection with any negotiated swaps; and
- Other Swap Advisory services mutually agreed to by DASNY and the CONSULTANT in writing.



**APPENDIX "C"**

**APPROVED CLASSIFICATIONS AND RATES**  
**CONTRACT NO.: TBD**

<b>Title</b>	<b>Approved Hourly Rate*</b>
Managing Director	\$
Principal	\$

\* Rates are inclusive of overhead and profit.

Per Transaction/ SWAP

	<b>New Swap</b>	<b>Termination Swap</b>	<b>Monitoring Monthly Swap</b>
Competitive	\$	\$	
Negotiated	\$	\$	
Reporting			\$

Any request for increases in Approved Hourly Rates shall be submitted to DASNY in writing, and is subject to review and approval of DASNY's Director, Procurement. If approved, a formal amendment to this Contract is not required.

**APPENDIX "D"**

**ADDITIONAL INSUREDS**

The policy shall name the following additional insured:

**Dormitory Authority – State of New York  
State of New York**

Questions concerning Additional Insured Requirements should be directed to Director, Procurement at  
(518) 257-3276



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 DASNY 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, DASNY 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 DASNY may disburse said amount so withheld by DASNY 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 DASNY 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 there under 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 DASNY 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 DASNY 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 DASNY 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 Engagement Letter 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 Engagement Letter 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 DASNY 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 DASNY beyond moneys available therefore.

**6. OWNERSHIP OF DOCUMENTS**

Not Applicable.

**7. TERMINATION OR SUSPENSION**

**A. Termination for Cause**

If the CONSULTANT defaults by failing to substantially perform, in accordance with the terms of this Contract for Professional Services, as determined by DASNY, DASNY may give written notice to the CONSULTANT (i) terminating this 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 DASNY and continue such cure until complete, DASNY may give notice to the CONSULTANT of immediate termination. If DASNY terminates this 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**

DASNY may at any time give written notice to the CONSULTANT terminating this Contract for Professional Services or suspending the Project, in whole or in part, for DASNY's convenience and without cause. If DASNY terminates this 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 Contract for Professional Services is terminated by DASNY 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 DASNY's option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by DASNY and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* 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 DASNY as a result of the default of the CONSULTANT.
- 2) If this Contract for Professional Services is (i) terminated by DASNY pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by DASNY pursuant to Paragraph 7B above, the CONSULTANT's compensation shall be calculated on the basis of services actually performed and approved by DASNY and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* 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 Consultant Contract Price.
- 3) If this Contract for Professional Services is suspended less than four (4) months by DASNY 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 Engagement Letter (if applicable) may be extended to such time as DASNY determines shall compensate for the time lost by the suspension, interruption or delay; such determination shall be set forth in writing by DASNY.

**8. SUSPENSION OR ALTERATION**

- A. DASNY may order the CONSULTANT in writing to suspend, delay, or interrupt performance of all or any part of the Work for a reasonable period of time as DASNY 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 DASNY 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**

Not Applicable.

**11. GOVERNMENT PROVISIONS**

The CONSULTANT shall comply with any applicable provisions or Acts of Congress, rules, regulations, and requirements of the Government of the United State of America. If there is a grant of money or loan of money by the Government of the United States of America for the Project, then the CONSULTANT shall furnish any information and provide any assistance which DASNY 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 DASNY may require with respect to any claim or action in any way relating to the CONSULTANT's services 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 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, DASNY, in DASNY's discretion, may deem the Project or any part thereof, suspended or altered on the date of said death or any date thereafter which DASNY 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 or any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by DASNY. DASNY shall have the right to the immediate possession of all files of the CONSULTANT relating to the Project, and shall have a right to retain the services of another consultant to complete the Project. If the CONSULTANT is a professional or other corporation, then this paragraph shall not be applicable.

**15. DASNY-CONSULTANT RELATIONSHIP**

The relationship created by this Contract between DASNY and CONSULTANT is one of independent CONSULTANT and it is in no way to be construed as creating any agency relationship between DASNY 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 DASNY 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 DASNY or DASNY's Representative.

## **17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE**

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

The OWNER requires the CONSULTANT to file the VRQ online via the New York State VendRep System (the "System") and submit a copy of the certification page to the OWNER. To enroll in and use the System, see the System Instructions at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. The CONSULTANT must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for System assistance, contact the Office of the State Comptroller's ("OSC") Help Desk at 866-370-4672 or 518- 408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

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

## **18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS**

- A. Officers and employees of DASNY are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, consultant, attorney, engineer, inspector or consultant of or for DASNY authorized on behalf of DASNY 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, 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 DASNY 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 DASNY. Employees of DASNY 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 DASNY based on ethical business practices, the CONSULTANT is expected to:
  - 1) furnish all goods, materials and services to DASNY as contractually required and specified,
  - 2) submit complete and accurate reports to DASNY and its agents as required,
  - 3) not seek, solicit, demand, or accept any information, verbal or written, from DASNY 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 DASNY-related projects and transactions,
  - 5) not engage in any course of conduct with DASNY 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. DASNY 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 DASNY employees, DASNY must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. DASNY reserves the right to request that the CONSULTANT modify the work assignment of a relative of an DASNY employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The CONSULTANT may hire former employees of DASNY. However, as a general rule, former employees of DASNY may neither appear nor practice before DASNY, nor receive compensation for services rendered on a matter before DASNY, for a period of *two years* following their separation from service with DASNY. In addition, former employees of DASNY are subject to a “lifetime bar” from appearing before DASNY or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with DASNY.
- G. The CONSULTANT agrees to notify DASNY’s Office of Internal Affairs at 518-257-3193 of any activity by an employee of DASNY 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 DASNY’s rejection of the CONSULTANT’s bids or proposals for future contracts.

## **19. COOPERATION WITH INVESTIGATIONS**

The CONSULTANT agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Professional Integrity (“OPI”) of DASNY or any other duly authorized representative of DASNY (“Representative”).

The CONSULTANT shall grant the OPI 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; subconsultant, consultant proposals for both successful and unsuccessful bids; 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 OPI’s or the Representative’s request, said materials shall be provided in a computer readable format, where available. At the request of the OPI or the Representative, the CONSULTANT shall execute such documents, if any, as are necessary to give the OPI 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 subconsultant or consultant in connection with the Contract, that does not contain a right to audit clause in favor of DASNY. The CONSULTANT shall assist the OPI or the Representative in obtaining access to past and present subconsultant files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of subconsultants pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

The CONSULTANT shall assist the OPI 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 subconsultant to include in all agreements that the subconsultant may hereinafter enter into with any and all subconsultants in connection with the Contract, a right-to-audit clause in favor of DASNY conferring rights and powers of the type outlined in this section. The CONSULTANT shall not enter into any subcontract with a subconsultant in connection with the Contract that does not contain such a provision.



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

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

**20. FALSE STATEMENTS/INFORMATION**

- A. False statements, information or data submitted on or with applications for payment may result in one or more of the following actions:
  - 1) Termination of the Contract
  - 2) Disapproval of future contracts and sub-contracts
  - 3) Withholding of final payment on the Contract
  - 4) Civil and/or criminal prosecution
- B. These provisions are solely for the benefit of DASNY, and any action or non-action hereunder by DASNY shall not give rise to any liability on the part of DASNY.

**21. INVALID PROVISIONS**

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

**22. CONFLICTING TERMS**

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

**23. ARTICLE 23 –2005 PROCUREMENT LOBBYING LAW**

- A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of and agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.
- B. For any contract \$15,000 or more each proposer shall submit, with its proposal on the form provided herewith, *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k*. The information contained in *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k* will serve as an informational resource to aid DASNY in making an award determination.
- C. DASNY 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, DASNY 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 Article 7.A. of this Contract – Termination for Cause.

**24. NONCOMPLIANCE**

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