

[_____]

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 Financial 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

Maximum Amount Payable

DASNY will compensate the CONSULTANT the Consultant Contract Price for all Required Services, Extra Services if necessary, and Reimbursable Expenses. The Consultant Contract Price shall be the total of all Engagement Letters issued under this Contract for Professional Services. An Engagement Letter shall be established on a Lump Sum (LS) or Actual Expense (AE) basis, not-to-exceed the total amount issued for each Engagement Letter. Each Engagement Letter shall contain a detailed listing of the specific services to be performed, and . The revised forms issued with the Engagement Letter shall serve as a formal acknowledgement to the CONSULTANT of the change(s) to this Term Contract for Professional Services and shall be made a part hereof.

- A. **Basis for Payment**

Compensation for services for each Engagement Letter shall be on the basis of one of the following methods as determined by DASNY and may include the following:

1. Negotiated Lump Sum: Negotiated fees for financial advisory, investment advisory and strategic consulting services will be based upon the hours needed for the specific Scope of Services identified in the proposal and the agreed-upon rates contained in Appendix "C", entitled **APPROVED CLASSIFICATIONS AND RATES** which is attached to and made a part hereof. Bond pricing services will be based on a fixed negotiated lump sum basis determined at the time the services are requested. Such amount to be determined on a total value basis rather than on specific hours and rates.
2. Actual Expense based on the specific hours charged by the CONSULTANT times the approved hourly rates contained in Appendix "C".
3. Specific Approved Reimbursable Expenses.

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, rates of pay, 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.

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

B. 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.

C. 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); 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 CONSULTANT 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,
 - (d) 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.
- (v) 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.
- (vi) 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.
- (vii) 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.

(viii) 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. **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 Exhibit A 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 Contract or upon being engaged to represent DASNY on a matter.

ARTICLE XV: 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.

ARTICLE XVI: 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 XVII: APPENDIX "E" ADDITIONAL ITEMS

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

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.

DASNY's ACKNOWLEDGEMENT

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

A specific scope of services will be included in each Engagement Letter under this Term Contract For Professional Services. General services that may be requested of the CONSULTANT include the following:

1. DASNY Process and Program Changes

Scope of services may include:

- Analyze ways to further streamline DASNY’s approval process for private client financings and the advantages and disadvantages of such streamlining.
- DASNY recently revised its financing guidelines to modify the security requirements for certain higher education and health care borrowers. Review DASNY’s financing guidelines to determine whether DASNY should consider any other changes to to better serve its private clients.
- Assess how DASNY should approach the covenants (debt service coverage and liquidity) that are included in DASNY financing documents for private clients.
- DASNY does not typically assign mortgages to the trustee that are granted as part of the security package in connection with private client financings. Assess the pros and cons of this approach.
- Assess the competitiveness of DASNY in the municipal market, particularly in relation to Local Development Corporations (LDCs) and out-of-state issuers and determine ways in which DASNY could change its approach to financings to enhance its competitive advantage and add value of our private clients.
- Determine other ways that DASNY could change its processes and programs to add value to DASNY clients.

2. Pricing and Marketing Initiatives

Scope of services may include:

- Review underlying security features of bond issues and headline risk which has been of focus to investors and provide an outlook with respect to these trends. Provide successful marketing strategies that have emerged in this environment for the sale of fixed and variable rate bonds including factors that are important in attracting interest among individual retail, professional retail and institutional buyers as well as obtaining the optimal price for transactions.
- Provide recommendations with regard to assembling an underwriting team best suited to market and sell bonds, including how issuers could maximize the sales effort by non-bookrunning members of the syndicate. Define new roles, if any, that should be assigned to Senior Managing Underwriter, Co-Managing Underwriter, Selling Group members or Financial Advisor.
- DASNY has traditionally looked to co-managers to add value to transactions by selling bonds to retail investors but many co-managers do not have retail capabilities. Assess if there is a way to more effectively use co-managers during the institutional order period. For example, if DASNY could identify certain maturities and provide a preference for quality institutional orders which are generated by co-managers.

- Assist in negotiated financings for DASNY's public and private clients, including consultation on market conditions, negotiation of terms with managing underwriters and pricing strategy. Provide historical and current market information used as a framework for determining market yield, coupons and call provisions. Describe the factors that affect market performance at initial pricing and in the secondary market for the PIT program, Sales Tax program and SUNY Dorms program. Recommend what assistance you can provide to ensure that DASNY's bonds are bring priced fairly.
- Assist DASNY during the competitive process including providing advice on structuring, number running capabilities, bidding logistics, verification, duplicating cash flows of the winning bidder, credit enhancement solicitations, rating agency presentations and investor meetings.
- Assess appropriate takedown levels in the current market.
- Assist DASNY in analyzing new products in the market.
- Determine other ways that DASNY could ensure the best execution of financings for its clients.

3. Services Provided by Intermediaries to the Authority

Scope of services may include:

- Review ways to maximize the services provided to DASNY by its Senior Managing Underwriters, Co-Managing Underwriters and Selling Group Members, including more competitive pricing.
- Evaluate historically the competitiveness of pricing for DASNY financing as compared to other similar financings that occurred in the same time period.
- Recommend ways in which to evaluate underwriter performance.
- Review ways for DASNY to achieve better pricing by credit enhancers.
- Review the cost of Bond Counsel DASNY financings as compared to the costs paid by other comparable public authorities.
- Provide comparables of recently priced transactions.
- Analyze the role and responsibilities of the Trustee under different scenarios with respect to pledges and covenants under DASNY's bond programs.
- Review any other services provided by intermediaries to enhance value for DASNY.

4. New Initiatives and New Programs

Scope of services may include:

- Provide any ideas or strategies for creating public private partnerships in the health care and higher education sectors.
- Provide any ideas or strategies for financing Health Information Technology (HIT) and Electronic Health Records (EHR) for not-for-profit health care institutions.
- Provide ideas for assisting education and health care institutions manage limited debt capacity by securing private equity.
- Provide ideas in which DASNY and NY Green Bank could work together to assist higher education and health care borrowers to finance renewable energy and energy efficiency projects with the goal of helping to create a more efficient, reliable and sustainable energy system. NY Green Bank (www.greenbank.ny.gov) is a division of NYSERDA engaged in specialty finance activities to bring more private capital into New York's clean energy markets by working in partnership with the private sector to identify and alleviate market gaps and financing barriers. Potential NY Green Bank roles in

facilitating great capital investment include as lender and/or debt guarantor (<http://greenbank.ny.gov/rfp1.aspx>).

- Draw down bonds have been an effective tool in private placement transactions to mitigate negative arbitrage during the construction period. Provide ideas wherein a similar concept could be incorporated into DASNY's public offerings. For example, if commercial paper could be used in some fashion.
- Provide ideas for identifying new sources of credit enhancement for lower rated borrowers.
- Provide any other initiative or idea that would benefit DASNY and add value for its public and/private clients.

5. **Extra Services**

Other Financial Advisory services not included in the Scope of Services mutually agreed to by DASNY and the CONSULTANT in writing.

APPENDIX “C”

APPROVED CLASSIFICATIONS AND RATES

CONTRACT NO.: [TBD]

Financial Advisory, Investment Advisory and Strategic Consulting Services

Title	Approved Hourly Rates*
	\$
	\$
	\$
	\$
	\$
	\$

* Rates are inclusive of overhead and profit.

Bond Pricing Services:

Bond pricing services will be negotiated on a fixed fee basis at the time the services are requested.

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 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.

B.

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 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.

- 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**.