

Date

TERM CONTRACT NO.: _____

CONTRACT

A Contract, dated as of [LOI Date], 2023, by and between the **Dormitory Authority of the State of New York** (“**DASNY**” or the “**Owner**”), a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 of the Public Authorities Law of the State of New York, as amended and having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964 (the “**DASNY**”), and [_____], whose office is located at _____, (the “**CONSULTANT**”); and

WHEREAS, the OWNER will be engaged in a variety of energy related projects and programs throughout New York State, for which the CONSULTANT may be called upon to provide Services defined in a unilateral amendment identified as a Work Authorization, which shall hereinafter be referred to as the Project; and

WHEREAS, the OWNER has selected the CONSULTANT to provide Energy Master Planning and Consulting Services to be specifically identified within each Work Authorization; and

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

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

ARTICLE I: TERM OF CONTRACT

The Term of this Contract for the assignment of Work Authorizations shall be from _____ through _____, except that any and all Work Authorization(s) assigned within said Term shall be completed regardless of the contract completion date. The OWNER may, in its sole discretion, extend the Term of this Contract and issue Work Authorizations for an extended period of one (1) year at a time, but not more than twice, to no later than _____. The CONSULTANT shall continue to render services for each Work Authorization it is assigned within the term of this Contract and any such extension(s) until the completion of said Work Authorization(s) unless the OWNER gives written notice to the contrary.

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

ARTICLE II: ADDITIONAL SERVICES

The OWNER reserves the right to direct the CONSULTANT to provide Additional Services and the CONSULTANT shall provide said Additional Services when so directed. Payment for said Additional Services shall be in accordance with Article VI.C.

ARTICLE III: EXTRA WORK

If the CONSULTANT believes that any work it has been directed to perform is beyond the scope of this Contract and constitutes Extra Work, it shall promptly so notify the OWNER in writing. The OWNER shall determine whether or not the work is in fact beyond the scope of this Contract and is considered Extra Work. If the OWNER determines that the work is Extra Work, 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 & SDVOB CONTRACT GOALS

The N.Y.S. certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) goals for this contract are 11% MBE, 7% WBE and 2% SDVOB. The goals refer to the utilization of M/WBE and SDVOB sub-consultants on DASNY Professional Services Contracts. With each project assignment the firm will be required to submit a new plan with dollar amounts.

ARTICLE V: CONSULTANTS

- A. The OWNER may retain a consultant or consultants to furnish services throughout the term of this Contract, and the CONSULTANT shall cooperate with said consultant or consultants.
- B. The CONSULTANT may propose and engage subconsultants, hereinafter referred to as Approved Subconsultants, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed subconsultant and, in such event, the CONSULTANT shall propose another subconsultant for that portion of the required services. The CONSULTANT shall be responsible to the OWNER for the timely and efficient completion of all services performed by said approved subconsultants.
- C. The CONSULTANT shall remove from the Project any employee of the CONSULTANT, any employee of the subconsultant or the subconsultant when so directed by the OWNER.
- D. Prior to execution of a Contract between the CONSULTANT and proposed subconsultant, the CONSULTANT shall submit a copy of the proposed subconsultant Contract to the OWNER for approval. The OWNER shall not be liable for payment to the CONSULTANT for any cost incurred under any subconsultant Contracts unless said approvals are obtained. The fees of any subconsultants retained by the CONSULTANT for services required under Article I shall be deemed covered by the compensation as stipulated in Article VI.A. The fees of any subconsultants retained by the CONSULTANT for services required under Article III shall be paid as outlined in Article VI.C.
- E. The CONSULTANT shall pay its subconsultants the full amount due them from their proportionate share of each requisition for payment submitted by the CONSULTANT and paid by the OWNER. The CONSULTANT shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.
- F. All services rendered by the CONSULTANT for each Project shall be performed by or under the immediate supervision of experienced CONSULTANT(s) licensed and registered in the State of New York possessing expertise in the discipline of the service being rendered. If the CONSULTANT chooses to subcontract or affiliate with another professional entity or organization for all or any portion of the CONSULTANT's scope of services, the CONSULTANT shall subcontract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services. The CONSULTANT shall furnish professional services in accordance with sound professional standards consistent with those practiced by professional firms on projects similar in size, complexity and cost to the Project.

ARTICLE VI: PROVISION FOR PAYMENT

Maximum Amount Payable

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

A. **Basis for Payment**

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

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

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

The OWNER may, at its sole discretion deny payment to the CONSULTANT for: 1) failure to invoice for services within 90 days of the services being rendered, 2) invoices provided without proper back-up documentation as defined in the contract.

B. **Reimbursables**

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

C. **Additional Services and Extra Work**

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

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

Actual Cost shall include the following specific items:

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

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

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

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

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

ARTICLE VII: REIMBURSABLE EXPENSES

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

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

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

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

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

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

** Departure or Arrival predicated on residence.

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

- B. fees paid to authorities having jurisdiction over the Project; and
- C. reproductions and postage when approved by the Owner and the CONSULTANT engages the services of a printing firm.

ARTICLE VIII: WITHHOLDING OF PAYMENTS

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

- A. to assure payment of just claims of any persons supplying labor or materials for the Work;
- B. to protect the OWNER from loss due to defective Work not remedied;
- C. to protect the OWNER, Client, Construction Manager, if applicable, or other such entities as identified by the OWNER as Additional Insureds from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of others caused by the act or neglect of the CONSULTANT or subconsultant. Client is herein defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations or fiduciaries;
- D. to assure payment of fines and penalties which may be imposed on the CONSULTANT pursuant to the provisions of this Contract; or
- E. to assure payment of fines and penalties which may be imposed on the CONSULTANT pursuant to Article 17 - Affirmative Action in Appendix E - Additional Items, , Section 17.1 paragraph D., subdivisions 6.g and 6.h. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

ARTICLE IX: FINAL PAYMENT AND RELEASE

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

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

ARTICLE X: OWNER'S PROCEDURE

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

ARTICLE XI: INSURANCE

A. General Provisions

1. The CONSULTANT and Subconsultants shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and of the insurance companies issuing such policies.
2. The CONSULTANT and Subconsultants shall maintain in force all insurance required to be procured by them under this Contract for Professional Services until issuance of the Notice of Physical Completion by the OWNER except where this Contract for Professional Services requires an insurance policy to be maintained for a period beyond issuance of the Notice of Physical Completion in which case the CONSULTANT and Subconsultants shall maintain such insurance policy in force for the specified period beyond issuance of the Notice of Physical Completion.

3. All insurance required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company or meet such other requirements as are acceptable to the OWNER in its sole and exclusive discretion.
4. All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to the OWNER except for non-payment in which case notice to the OWNER shall be provided as required by law.
5. All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the OWNER.
6. All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall be written on an occurrence basis except where this Contract for Professional Services explicitly allows otherwise.
7. All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall include a provision or endorsement that the OWNER and the Client(s) shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the CONSULTANT or Subconsultant shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. At any time this Contract for Professional Services requires the CONSULTANT or any Subconsultant to maintain an insurance policy, the OWNER may require the CONSULTANT or any Subconsultant to provide proof, acceptable to the OWNER in its sole discretion, that the CONSULTANT or Subconsultant has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the CONSULTANT or Subconsultant may be liable under the claims pending or reasonably possible against the CONSULTANT or Subconsultant at the time the OWNER requires the proof. A failure of the CONSULTANT or Subconsultant to provide such proof is a failure of the CONSULTANT or Subconsultant to maintain the insurance required by the Contract for Professional Services or to provide the OWNER with evidence of valid and in-force insurance coverage required by the Contract for Professional Services.
8. All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall include a provision or endorsement that there shall be no right of subrogation against the OWNER, Client(s), or Construction Manager. If any of the CONSULTANT's policies or any of the policies of any Subconsultant prohibit such a waiver of subrogation, the CONSULTANT or Subconsultant shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the OWNER.
9. Each liability and protective liability insurance policy required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for Professional Services shall include a provision or endorsement that the coverage afforded the OWNER,

Client(s) and Construction Manager (if applicable) under such policy shall be primary and non-contributory and that such policy shall be primary to any other insurance policy maintained by the OWNER, by the Client(s) or by the Construction Manager (if applicable). Any other insurance policy maintained by the OWNER, by the Client(s) or by the Construction Manager (if applicable) shall be in excess of and shall not contribute with the CONSULTANT's or Subconsultant's insurance policy, regardless of the "other insurance" clause contained in the OWNER's, Client(s)'s or Construction Manager's (if applicable) own policy of insurance or the CONSULTANT's or Subconsultant's insurance policies.

10. Any CONSULTANT Contract Documents, including but not limited to the Request for Proposal, but excluding Change Orders, may require any of the CONSULTANT and Subconsultants to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the OWNER or Client(s).
11. Notwithstanding any other provision of the Contract for Professional Services, the OWNER, in a Change Order or Contract Amendment, may require the CONSULTANT and any or all Subconsultants to provide, at the expense of the OWNER, any other form or limit of insurance in addition to the insurance requirements of the original Contract for Professional Services necessary to secure the interests of the OWNER, Client(s), or Construction Manager (if applicable).
12. Neither the procurement nor the maintenance of any type of insurance by the OWNER, the Client(s), the CONSULTANT or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the CONSULTANT or any Subconsultant from any of the obligations or risks accepted by the CONSULTANT and Subconsultants or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the OWNER, Client(s) and Construction Manager.
13. All provisions of General Terms and Conditions Article 8— Insurance are to the fullest extent permitted by law. One purpose of this Contract for Professional Services is to allocate, to the fullest extent permitted by law, all risk of loss to the CONSULTANT, each Subconsultant, and the insurers of each. Each insurance company from which OWNER or Client(s) has directly purchased an insurance policy is a third-party beneficiary of the CONSULTANT's and each Subconsultant's obligations to procure insurance.
14. CONSULTANT is responsible for ensuring that each Subconsultant obtains and maintains in the required amount each type of insurance policy required by this Contract for Professional Services and that such insurance policy provides the OWNER, Client(s) and Construction Manager with the coverage required by this Contract for Professional Services.
15. CONSULTANT agrees and acknowledges that, because the CONSULTANT (and not the OWNER or Client[s]) is responsible for performance of the duties and obligations set forth in this Contract for Professional Services for completion of the Project, the CONSULTANT, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the OWNER and Client(s).

B. Submission of Insurance

1. OWNER will not execute the Contract for Professional Services unless the CONSULTANT shall submit to the OWNER or the OWNER's designee proof of insurance in such forms as requested and deemed acceptable by the OWNER, indicating the Project, and showing evidence of all insurance required under the Contract for Professional Services. Upon the OWNER's request, the CONSULTANT shall provide a copy of each

insurance policy required by the Contract for Professional Services certified by the insurance carrier as a true and complete copy. The OWNER may request such a certified copy of a policy at any time and may make such requests as often as the OWNER, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies. In addition, the CONSULTANT shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER, constitute a warranty by the CONSULTANT and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

2. The CONSULTANT shall submit to the OWNER or OWNER's designee insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and Construction Manager (if applicable), and such other documents requested by the OWNER as proof of insurance for the CONSULTANT. All insurance submittals must be approved by the OWNER or the OWNER's designee prior to the CONSULTANT's commencement of work.
3. Upon the OWNER's request, the CONSULTANT shall submit to the OWNER or OWNER's designee proof of insurance for one or more Subconsultants, in such forms as requested and deemed acceptable by the OWNER, indicating the Project, and showing evidence of all insurance required under the Contract for Professional Services. Upon the OWNER's request, the CONSULTANT shall provide a copy of each insurance policy of the Subconsultant or Subconsultants required by the Contract for Professional Services and certified by the insurance carrier as a true and complete copy. The OWNER may request such a certified copy of a policy at any time and may make such requests as often as the OWNER, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies for one or more Subconsultants. In addition, the CONSULTANT shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance of the Subconsultants, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER by the CONSULTANT, constitute a warranty by the CONSULTANT, the Subconsultant and the Subconsultant's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
4. Upon request of the OWNER made any time after bids are opened, the CONSULTANT shall submit insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and Construction Manager (if applicable), and such other documents requested by the OWNER as proof of insurance for a Subconsultant. OWNER may request proof of insurance for one or more Subconsultants at the same or at different times and may request proof of insurance for a particular Subconsultant as often as OWNER, in its sole and exclusive discretion, determines is necessary.

C. **Insurance Provided by the CONSULTANT**

1. Prior to award of the Contract for Professional Services, the CONSULTANT shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract for Professional Services all of the insurance required under this Contract for Professional Services. Each Subconsultant shall procure, at its sole cost and expense, prior to the CONSULTANT submitting to the OWNER the name of such Subconsultant and prior to such Subconsultant commencing performance of any of the work, and each Subconsultant shall maintain in force at all times required by this Contract for Professional Services all

of the insurance required under this Contract for Professional Services. The insurance that the CONSULTANT and each Subconsultant shall procure and maintain under this Contract for Professional Services includes, but is not limited to, the following:

- a. Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (Acord certificates are not acceptable):
 - (1) C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall 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 shall 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 CONSULTANT'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 Workers' Compensation Board's Self Insurance Office or the CONSULTANT's Self Insurance Administrator shall provide a completed form.

- b. Disability Benefits insurance. Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:
 - (1) DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
 - (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. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's 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 shall have to be completed prior to award of any subsequent contract.

- c. Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the CONSULTANT or Subconsultant for bodily injury, property damage, and personal/advertising injury arising from performance of the work or operations or presence at or in the vicinity of the Site of the Contract for Professional 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 \$1,000,000; the Fire Damage Legal Liability shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$4,000,000. 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:
 - (1) If the CONSULTANT or Subconsultant proposes the use of a policy other than the ISO form CG 00 01 12 07, the CONSULTANT or Subconsultant shall

provide the proposed policy to the OWNER which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The CONSULTANT or Subconsultant shall pay OWNER any attorney fees and other costs incurred by OWNER in determining whether the proposed policy provides equivalent coverage. OWNER will select the attorney providing advice on the proposed policy.

- (2) ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority, Client(s), any other entities as required by the Professional Contract Documents, and if applicable, the Construction Manager (if applicable) and for form CG 20 37 04 13 or its equivalent, specifically listing the Project location. In the event said endorsements or equivalents are not able to be provided, the OWNER may accept, at the OWNER's sole discretion, CG 20 38 04 13 or its equivalent or other manuscript endorsements providing equivalent coverage.
- (3) If the CONSULTANT or Subconsultant proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, the CONSULTANT or Subconsultant shall provide the proposed endorsement(s) to the OWNER or the OWNER's designee which, in its sole and exclusive discretion, will determine whether the proposed endorsements provide equivalent coverage. CONSULTANT and Subconsultant shall pay OWNER any attorney fees and other costs incurred by OWNER in determining whether the proposed endorsements provide equivalent coverage. OWNER will select the attorney providing advice on the proposed endorsements.
- (4) Additional insured status for OWNER, Client(s), Construction Manager and any other entities as required by the CONSULTANT Contract Documents shall apply during the Products/Completed Operations phase as well as during the course of performance of the work of the Contract for Professional Services.
- (5) The policy provisions required by Article XI of this Contract.
- (6) Excavation, Collapse and Underground Hazards.
- (7) Independent consultants/subconsultants.
- (8) Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Contract for Professional Services, and covering tort liability of another assumed in a contract.
- (9) Products and completed operations coverage for a term no less than three years commencing upon issuance by the OWNER of the Notice of Physical Completion.
- (10) Premises liability.
- (11) Defense and/or indemnification obligations, including obligations assumed under this Contract for Professional Services.
- (12) Cross liability for additional insureds.
- (13) CONSULTANT and Subconsultant means and methods.
- (14) Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
- (15) ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
- (16) The maximum deductible or self-insured retention shall be \$50,000.
- (17) No endorsement or provision in the policy shall exclude coverage for OWNER, Client(s), or Construction Manager for any liability when the injured party is an employee of CONSULTANT or any Subconsultant.
- (18) No endorsement or provision in the policy shall require privity of contract between the OWNER and Subconsultant or between the Client(s) and the CONSULTANT or Subconsultant or between the Construction Manager and the CONSULTANT or Subconsultant in order for the OWNER, the Client(s), or the Construction Manager to have coverage as an insured on such insurance policy.
- (19) If the CONSULTANT or Subconsultant must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.

- (20) No endorsement or provision in the policy shall have a height limitation or exclusion.
 - (21) No endorsement or provision in the policy shall have a classification exclusion with respect to work performed for the OWNER, Client(s), and Construction Manager.
 - (22) OWNER, Client(s), and Construction Manager shall be covered for any and all liability arising out of acts or omissions of CONSULTANT and any Subconsultant.
- d. Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract for Professional Services, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least \$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract for Professional Services involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.
- e. Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding sections, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding sections. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding sections. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the OWNER or Client(s) or Construction Manager or any other additional insured. Any other insurance maintained by the OWNER, the Client(s), the Construction Manager, or any other additional insured shall be in excess of and shall not contribute with the CONSULTANT's or Subconsultant's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the OWNER's or Client(s)'s or Construction Manager's or other additional insured's own policy of insurance or the CONSULTANT's or Subconsultant's insurance policies.
- f. Professional Liability insurance: Each CONSULTANT and any Subconsultant performing any work in connection with this Contract for Professional Services shall procure and maintain Professional Liability Insurance or Errors and Omissions Liability Insurance, as applicable, for the work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the CONSULTANT or Subconsultant by this Contract for Professional Services or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract for Professional Services. This insurance may be issued on a claims-made policy form and shall be maintained for no less than three (3) years after issuance by the OWNER of the Notice of Physical Completion. The policy, at the sole expense of the CONSULTANT or Subconsultant, shall have extended Discovery Clause coverage of at least three (3) years after issuance by the OWNER of the Notice of Physical Completion if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.

D. **Other Insurance Provided by CONSULTANT**

1. The CONSULTANT and each Subconsultant shall also procure and maintain as required by Subsections A.1 and C.1 of Article XI of this Contract, the following insurance:
 - a. United States Longshore and Harbor Workers' Compensation Act and Jones Act: When, to perform the work in connection with this Contract for Professional Services, the CONSULTANT or any Subconsultant is engaged in activities on or near a shoreline or on or near the navigable waterways of the United States or when any part of the work is connected to water related activities, the Workers' Compensation policy referenced above of the CONSULTANT and any such Subconsultant shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.
 - b. Pollution Liability insurance: When the work in connection with this Contract for Professional Services includes abatement, removal, repair, replacement, enclosure, encapsulation or disposal of any pollutants, which include but are not limited to, petroleum, petroleum products, mold, asbestos, lead or any other Hazardous Material, the CONSULTANT or any Subconsultant performing work involving any of the pollutants, shall procure and maintain in full force and effect pollution legal liability insurance with limits of at least \$2,000,000 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:
 - (1) Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the OWNER in the bidding documents.
 - (2) The policy provisions required by Article XI, Section A of this Contract.
 - (3) A maximum deductible or self-insured retention of \$50,000.
 - (4) Coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the OWNER, Client(s) or Construction Manager arising from the work in connection with this Contract for Professional Services.
 - (5) Coverage shall be provided until three years after the OWNER issues the Certificate of Physical Completion.
 - c. Railroad Protective Liability insurance: If any work of the Contract for Professional Services is to be performed on or within fifty (50) feet of a railroad property or railroad right of way or will require entrance upon railroad property or right of way or will require assignment of a railroad employee, the CONSULTANT shall provide and maintain a Railroad Protective Liability policy with the policy limits required by the OWNER(s) of the railroad. For purposes of this section, a subway is a railroad. The policy form shall be ISO-RIMA or an equivalent form approved by the OWNER(s) of the railroad. The railroad OWNER(s) shall be the named insured on the policy and the definition of "physical damage to property" shall mean direct and accidental loss of or damage to all property of any named insured and all property in any named insured's care, custody, or control. If the CONSULTANT shall provide a Railroad Protective Liability insurance policy, the CONSULTANT and any Subconsultant performing on or within fifty (50) feet of railroad property or railroad right of way or entering railroad property or right of way or requiring assignment of a railroad employee shall have their CGL insurance policy endorsed to delete the exclusion of coverage for work within fifty (50) feet of railroad property.
 - d. Unmanned Aircraft System (UAS) Insurance: Any CONSULTANT or Subconsultant proposing the use of any Unmanned Aircraft System for any purpose on a Project,

including but not limited to investigation, surveying, photography, inspections or observation, shall comply with all of OWNER's policies and procedures regarding such use and shall provide coverage, in the form of an Unmanned Aircraft System (UAS) endorsement to the Commercial General Liability Coverage required above or Aircraft Liability Coverage with a minimum limit of \$1,000,000. Such coverage shall name the OWNER and any required third parties as additional insureds.

- e. Marine Protection & Indemnity insurance and Hull & Machinery insurance: Each of the CONSULTANT and any Subconsultant performing any work in connection with this Contract for Professional Services on navigable water or connected to water-related activities or with marine operations, shall procure and maintain Marine Protection & Indemnity insurance and Hull & Machinery insurance. Hull & Machinery coverage shall be provided for the total value of the watercraft and equipment used in the work on navigable water or connected to water-related activities or with marine operations. The CONSULTANT shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract for Professional Services with a minimum limit of \$2,000,000. The OWNER, the Client(s) and, if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the OWNER in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:
- (1) The policy provisions required by Article XI, Section A of this Contract.
 - (2) A maximum deductible or self-insured retention of \$50,000.
 - (3) Coverage shall be provided until the OWNER issues the Certificate of Physical Completion.
 - (4) Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the OWNER in the bidding documents.

E. Stop Work Order – Insurance

1. All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The CONSULTANT shall be responsible to submit updated insurance certificates to the OWNER or the OWNER's designee thirty (30) calendar days prior to any insurance certificate expiration date.
2. Failure of the CONSULTANT or any Subconsultant to maintain the insurance required by the Contract for Professional Services or to provide the OWNER or the OWNER's designee with evidence of valid and in-force insurance coverage required by the Contract for Professional Services shall result in a Stop Work Order pursuant to General Terms and Conditions Article 5 – Termination or Suspension and/or withholding of payment to the CONSULTANT.
3. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CONSULTANT or Subconsultant shall immediately cease work on the Project. The CONSULTANT or Subconsultant shall not resume work on the Project until authorized to do so by the OWNER or the OWNER's designee.
4. Any delay or time lost as a result of the CONSULTANT or Subconsultant not having proper insurance required by this Contract for Professional Services or not providing the OWNER or the OWNER's designee with evidence of valid and in force insurance required

by the Contract for Professional Services shall not give rise to a delay Claim or any other Claim against the OWNER. Further, the CONSULTANT may be liable to other consultants for costs incurred by reason of the CONSULTANT's, Subconsultant's or Subcontractor's failure to provide insurance.

F. **Subcontractor Insurance Requirements**

1. To the extent that the CONSULTANT or any Subconsultant retains any Subcontractor in connection with the Project, such Subcontractor's insurance obligations are identical to the obligations placed upon Subconsultants pursuant to Sections A., B., C., D., and E. of Article XI of this Contract for Professional Services, except that Subsections A.2 and C.1.f of this Contract shall not apply to any Subcontractor. Notwithstanding the above, such Subcontractors shall only be required to maintain its insurance policies until Notice of Physical Completion or as otherwise directed by OWNER.

ARTICLE XII: GENERAL INDEMNITY

To the fullest extent permitted by law, the CONSULTANT shall defend if requested, protect, indemnify and hold harmless the OWNER and the OWNER'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 the OWNER or the OWNER'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 consultants, subcontractors or suppliers; or (iii) of the agents, employees or servants of the CONSULTANT or its consultants, subcontractors or suppliers. The CONSULTANT shall also indemnify the OWNER 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 the OWNER, the Client or the OWNER's related parties, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CONSULTANT the percentage of uninsured defense costs that the CONSULTANT incurred based upon an apportionment of the OWNER's allocated responsibility.

A. **Intellectual Property Indemnity**

To the fullest extent permitted by law, the CONSULTANT shall defend, protect, hold harmless, and indemnify the OWNER and the OWNER'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 designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the CONSULTANT has reason to believe the use of a required design, process or product is an infringement of a patent, the CONSULTANT shall be responsible for such loss unless such information is promptly given to the OWNER.

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

The OWNER's selection of one or more remedies for breach of this Term Contract for Professional Services shall not limit the OWNER's right to invoke any other remedy available to the OWNER 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**

The OWNER 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: OWNER'S RIGHT TO AUDIT AND INSPECT RECORDS

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

ARTICLE XIV: ASSIGNMENT

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

ARTICLE XV: APPENDIX "E" ADDITIONAL ITEMS

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

ARTICLE XVI: COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The effective date of this Contract shall be the date upon which this agreement is duly executed by both parties.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

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

By _____

Title: Authorized Officer

Date: _____

Firm Name
Firm Address
Firm Address

By _____

Authorized Officer/Signatory

Title: _____

Date: _____

SAMPLE

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

1.0 INTRODUCTION

The Consultant shall provide a variety of energy consulting and related services, including energy master planning, consulting, and management services.

2.0 OBJECTIVES

The services required generally involve providing energy related services including master planning, program management and consulting services in support of various programs and projects. These services will typically include some combination of the following:

- a. Evaluation, analysis, and documentation
- b. Identifying and recommending strategies
- c. Master planning and management.
- d. Energy, O&M, Carbon reduction, and sustainability program management

3.0 SCOPE OF SERVICES

- Preliminary energy analysis and benchmarking;
- Campus/facility energy assessment (ASHRAE Level I, Level II, and Level III) Energy conservation measures (ECMs) analysis and planning;
- Infrastructure renewal projects (IRs) analysis and planning Energy supply, reliability, and security analysis and planning Efficient Electrification planning at building and energy system (campus/community/district) levels;
- Metering, Sub-metering and Energy Management System planning and management;
- Operation & Maintenance (O&M) planning, analysis, tracking, management, and technical support such as training, SOP (standard operating procedures) development, etc.;
- Utilities tracking and reporting;
- Utility use analysis, EUI (energy use index) goal setting and reporting;
- Funding and implementation schedule analysis, planning, and management Identifying and recommending strategies to provide measures and develop procedures that will reduce energy consumption and carbon emissions, and potentially reduce related costs; ASHRAE Level I, or II Energy Audits as applicable;
- Analysis of fuel sources with the intent to support state goals for aggressively reduced Greenhouse Gas (GHG) emissions under the Climate Leadership and Community Protection Act (inclusive of renewable energy on-site and renewable energy purchasing strategies);
- Review and evaluate utility costs;
- Evaluation of mechanical and electrical systems specifications and efficiencies Air permitting assistance and evaluation of compliance with applicable EPA and NYSDEC regulations;

- NYSERDA or other grant and program opportunity notices application and administration;
- Project scope and budget fund opportunity applications;
- NY State Executive Order and NYC Local Law compliance activities including, but not limited to benchmarking, energy audits, energy use;
- verification-documentation and reporting, planning, O&M planning, and implementation planning;
- Energy Efficiency Program activities including, but not limited to energy program administration, energy and carbon cost analysis and budgeting, planning, supply side management, demand side management including support of ventilation and air quality goals for occupant health and comprehensive energy program technical support;
- System-wide and campus energy master planning;
- Annual and/or monthly campus specific energy reporting against the baseline initiatives established with the energy master plan;
- Database Management, including updates monthly reflecting account numbers, meter numbers, service addresses, building served and vendor information;
- Supply Side Management:
 - Procurement Strategies to support all energy initiatives;
 - Utility Bill Audits / Tariff Reviews;
 - Energy Rebates / Reimbursements
- Demand Side Management;
 - Energy Consumption Monitoring;
 - Support Facility Operation & Maintenance; and
 - Demand Response Programs that develop and implement demand reduction and demand response strategies in balance with established occupant health and productivity goals.

APPENDIX "B"

SUMMARY OF PAYMENTS

A. MAXIMUM AMOUNT PAYABLE

Maximum Amount Payable for all Services required pursuant to the Contract shall be the total of all Projects listed on the attached Appendix.

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

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

APPENDIX “C”

APPROVED CLASSIFICATIONS AND RATES
CONTRACT NO.

	*Maximum
Classifications	Direct Hourly Rates
* Times a Multiplier of	

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

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

APPENDIX "D"

ADDITIONAL INSUREDS

4201 Schools - Certificates should name the specific 4201 School facility and DASNY as additional insureds.

Beacon Institute - Certificates should name the State of New York, the Beacon Institute for Rivers and Estuaries, the New York State Office of Parks and Recreation, the Construction Manager and DASNY as additional insureds.

City of New York Court Facilities - Certificates should name the City of New York, the Construction Manager and DASNY as additional insureds.

City University of New York (CUNY) - Certificates should name the City University of New York, the City University Construction Fund, the Construction Manager and DASNY as additional insureds.

New York State Housing Trust Fund Corporation - Certificates should name the New York State Housing Trust Fund Corporation and DASNY as additional insureds.

New York City Department of Environmental Protection - Certificates should name the City of New York, the NYC Department of Environmental Protection, the City of Kingston, the Construction Manager and DASNY as additional insureds.

New York City Health and Hospitals Corporation (HHC) - Certificates should name the City of New York, the New York City Health and Hospitals Corporation, the Construction Manager and DASNY as additional insureds.

New York City Office of the County Medical Examiner (OCME) - Certificates should name the City of New York, the New York City Health and Hospitals Corporation, the specific OCME facility, the Construction Manager and DASNY as additional insureds.

New York State Department of Environmental Conservation (DEC) - Certificates should name the New York State Department of Environmental Conservation, the State of New York, the Construction Manager and DASNY as additional insureds.

New York State Department of Health (DOH) - Certificates should name the New York State Department of Health, the State of New York, the Construction Manager and DASNY as additional insureds.

New York State Department of Mental Hygiene: Office of Mental Health (OMH), Office for People with Developmental Disabilities (OPWDD) and Office of Alcoholism and Substance Abuse Services (OASAS) - Certificates should name the State of New York, the Construction Manager (when applicable) and DASNY as additional insureds.

New York State Parks Recreation & Historic Preservation - Certificates should name the New York State Parks Recreation & Historic Preservation, the State of New York, the Construction Manager and DASNY as additional insureds.

New York State Education Department (SED) - Certificates should name the New York State Education Department, the State of New York, the Construction Manager and DASNY as additional insureds.

Office of Court Administration (OCA) - Certificates should name the State of New York, The Unified Court System of New York, the City of Albany, the Construction Manager and DASNY as additional insureds.

Roswell Park Cancer Institute - Certificates should name The Roswell Park Cancer Institute Corporation, the State of New York, the New York State Department of Health, the Construction Manager and DASNY as additional insureds.

Special Acts School District (SASD) - Certificates should name the specific SASD facility and DASNY as additional insureds.

State University of New York (SUNY) - Certificates should name the State University of New York, the State of New York and DASNY as additional insureds.

Questions concerning Additional Insured Requirements should be directed to Nic Zarrelli, Senior Managing Director, Construction, Finance and Administration at (518) 257-3787.

SAMPLE

APPENDIX "E"

ADDITIONAL ITEMS

TABLE OF CONTENTS

<u>1.</u>	<u>LABOR LAW PROVISIONS</u>	<u>7</u>
<u>2.</u>	<u>NONDISCRIMINATION</u>	<u>8</u>
<u>3.</u>	<u>PROVISIONS REQUIRED BY LAW DEEMED INSERTED</u>	<u>9</u>
<u>4.</u>	<u>COMPLIANCE WITH LAWS, RULES, AND REGULATIONS</u>	<u>9</u>
<u>5.</u>	<u>CONTRACT DEEMED EXECUTORY</u>	<u>9</u>
<u>6.</u>	<u>OWNERSHIP OF DOCUMENTS</u>	<u>10</u>
<u>7.</u>	<u>TERMINATION OR SUSPENSION</u>	<u>10</u>
<u>8.</u>	<u>SUSPENSION OR ALTERATION</u>	<u>11</u>
<u>9.</u>	<u>LAWS OF THE STATE OF NEW YORK</u>	<u>11</u>
<u>10.</u>	<u>CODES</u>	<u>11</u>
<u>11.</u>	<u>GOVERNMENT PROVISIONS</u>	<u>11</u>
<u>12.</u>	<u>COOPERATION</u>	<u>12</u>
<u>13.</u>	<u>LATE PAYMENT</u>	<u>12</u>
<u>14.</u>	<u>DEATH OF THE CONSULTANT</u>	<u>12</u>
<u>15.</u>	<u>OWNER-CONSULTANT RELATIONSHIP</u>	<u>12</u>
<u>16.</u>	<u>PROTECTION OF LIVES AND HEALTH</u>	<u>12</u>
<u>17.</u>	<u>AFFIRMATIVE ACTION AND NEW YORK STATE BUSINESS AND LABOR PARTICIPATION</u>	<u>12</u>
<u>18.</u>	<u>NYS VENDOR RESPONSIBILITY QUESTIONNAIRE AND CONTINUING INTEGRITY</u>	<u>19</u>
<u>19.</u>	<u>PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS</u>	<u>20</u>
<u>20.</u>	<u>COOPERATION WITH INVESTIGATIONS</u>	<u>22</u>
<u>21.</u>	<u>FALSE STATEMENTS/INFORMATION</u>	<u>23</u>
<u>22.</u>	<u>INVALID PROVISIONS</u>	<u>23</u>
<u>23.</u>	<u>CONFLICTING TERMS</u>	<u>23</u>
<u>24.</u>	<u>GREEN AND CLEAN STATE BUILDINGS</u>	<u>23</u>
<u>25.</u>	<u>2005 PROCUREMENT LOBBYING LAW</u>	<u>24</u>
<u>26.</u>	<u>NONCOMPLIANCE</u>	<u>24</u>

1. **LABOR LAW PROVISIONS**

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

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

2. **NONDISCRIMINATION**

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

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

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

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

5. CONTRACT DEEMED EXECUTORY

The CONSULTANT agrees that the Contract shall be deemed executory to the extent of moneys available from either (i) the proceeds of bonds issued by the Authority for the Contract, or (ii) moneys made available by the Client for the Contract, or (iii) other non-Authority moneys made available from whatever source specifically for the Contract and no liability shall be incurred by the Owner beyond moneys available therefore.

6. OWNERSHIP OF DOCUMENTS

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

7. TERMINATION OR SUSPENSION

A. Termination for Cause

If the CONSULTANT defaults by failing to substantially perform, in accordance with the terms of this Contract for Professional Services, as determined by the OWNER, the OWNER 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 the OWNER and continue such cure until complete, the OWNER may give notice to the CONSULTANT of immediate termination. If the OWNER 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

The OWNER 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 the OWNER'S convenience and without cause. If the OWNER 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 the OWNER pursuant to Paragraph 7A above, no further payment shall be made to the CONSULTANT until completion of the Project. At such time, the CONSULTANT'S compensation shall, at the OWNER'S option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the CONSULTANT'S compensation shall be reduced by all costs and damages incurred by the Owner as a result of the default of the CONSULTANT.

2. If this Contract For Professional Services is (i) terminated by the OWNER pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT'S compensation shall be calculated on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* 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 Professional Contract Price.

3. If this Contract for Professional Services is suspended less than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT specifically agrees that such suspension, interruption or delay of the performance of the services pursuant to this item shall not increase the cost of the Professional Services.

4. Time of completion set forth in the Project Design Schedule may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption or delay; such determination shall be set forth in writing by the OWNER.

8. SUSPENSION OR ALTERATION

- A. The OWNER may order the CONSULTANT in writing to suspend, delay, or interrupt performance of all or any part or the Work for a reasonable period of time as the OWNER may determine. The order shall contain the reason or reasons for issuance which may include, but shall not be limited to, the following: latent field conditions, substantial program revisions, acquisition of rights-of-way or real property, financial crisis, labor disputes, civil unrest, or Acts of God.
- B. Upon receipt of a suspension order, the CONSULTANT shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.
- C. The CONSULTANT specifically agrees that such suspension, interruption, or delay of the performance of the Work pursuant to this Item shall not increase the cost of performance of the Work of this Contract.
- D. Time of Completion of the Work may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption, or delay, such determination to be set forth in writing.

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

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

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

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

11. GOVERNMENT PROVISIONS

The CONSULTANT shall comply with any applicable provisions or Acts of Congress, rules, regulations, and requirements of the Government of the United State of America. If there is a grant of money or loan of

money by the Government of the United States of America for the Project, then the CONSULTANT shall furnish any information and provide any assistance which the OWNER deemed necessary for the preparation of any certificates, reports, or materials required as a result of obtaining said grant or loan.

12. **COOPERATION**

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

13. **LATE PAYMENT**

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

14. **DEATH OF THE CONSULTANT**

If the CONSULTANT is an individual and that CONSULTANT shall die prior to the said completed performance of this Contract, then the payment to the estate of said CONSULTANT, pursuant to this Contract, shall be made as if the Project or any part thereof had been suspended or altered on the date of the death of the CONSULTANT. If the CONSULTANT is a partnership and a partner shall die prior to the completed performance of this Contract, the OWNER, in the OWNER's discretion, may deem the Project or any part thereof, suspended or altered on the date of said death or any date thereafter which the OWNER selects, and the payment to the estate of the deceased CONSULTANT or the partnership, pursuant to this Contract, shall be made as if the Project or any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by the OWNER. The OWNER shall have the right to the immediate possession of all files of the CONSULTANT relating to the Project, all plans and specifications in regard 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. **OWNER-CONSULTANT RELATIONSHIP**

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

16. **PROTECTION OF LIVES AND HEALTH**

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

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

A. The CONSULTANT agrees, in addition to any other nondiscrimination provision of this Contract For Professional Services (the "Contract") and at no additional cost to the Owner, to fully comply with and cooperate in the implementation of an Affirmative Action Plan designed to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for

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

- B. The CONSULTANT must submit to the Owner, and the CONSULTANT's prospective sub-consultants must submit to the CONSULTANT, who in turn must submit to the Owner, an Affirmative Action Plan which demonstrates its best efforts to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for MBE/WBE/SDVOB participation in the performance of the Work, in such form and substance as may be required by the Owner. A meeting to review these submissions may be scheduled by the Owner.
- C. These Affirmative Action provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Labor Law or other applicable Federal, State or local laws.
- D. In Accordance with Article 15A and Article 17B of the Executive Law and in conformance with the Regulations promulgated by New York State Empire State Development Division of Minority and Women's Business Development and the New York State Office of General Services Division of Service-Disabled Veterans' Business Development, the CONSULTANT agrees to be bound by the following clauses. In any circumstances of uncertainty or conflict, the Regulations of the Minority and Women's Business Development Division supersede this information.

1) Utilization Plans

- a. The CONSULTANT shall submit to the Owner a Statewide Utilization Management Plan (Utilization Plan) for each work authorization issued regardless of dollar value via the NYS Contract System. The Utilization Plan shall list all sub-consultants the CONSULTANT intends to use on the contract and indicate which ones are MBE/WBE and SDVOB. The Utilization Plan shall be prepared to achieve the participation goals indicated in the Request for Proposal.
- b. Upon approval of the Utilization Plan, the CONSULTANT shall submit to the Owner an original signed and notarized Utilization Plan Cover Sheet along with a copy of the approved Utilization Plan.
- c. The Owner will review the Utilization Plan and will issue to the CONSULTANT a written notice of acceptance or deficiency within 20 days of its receipt. A notice of deficiency shall include (i) the name of any MBE/WBE/SDVOB which is not acceptable for the purpose of complying with the MBE/WBE/SDVOB participation goals and the reasons why it is not acceptable; (ii) elements of the CONSULTANT's Required Services which the Owner has determined can be reasonably structured by the CONSULTANT to increase the likelihood of participation in the Contract by MBE/WBE/SDVOBs; and (iii) other information which the Owner determines to be relevant to the Utilization Plan. Although the MBE/WBE/SDVOB goals apply to the entire Term Contract, failure to achieve the required participation by work authorization could impact the receipt of future work authorizations.

- d. The CONSULTANT shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Owner a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Owner to be inadequate, the Owner shall notify the CONSULTANT and direct the CONSULTANT to submit, within five (5) business days, a request for a partial or total waiver of M/WBE/SDVOB participation goals. Failure to file the acceptable waiver documentation in a timely manner may be grounds for disqualification of the proposal.
- e. The CONSULTANT who has made good faith efforts to obtain commitments from MBE/WBE/SDVOB sub-consultants prior to submitting its Utilization Plan, but was unsuccessful in securing any, or sufficient commitments from MBE/WBE/SDVOB sub-consultants, may submit a request for waiver at the same time it submits its Utilization Plan by adding a justification statement in step 3 of the submittal in the NYS Contract System. Additional documentation of good faith efforts may be required upon review by DASNY. If a request for waiver is submitted with the Utilization Plan and is not accepted by the Owner at that time, the provisions of clauses 11.2.2 and 11.2.3, regarding the notice of deficiency and written remedy will apply. In this case, the CONSULTANT may submit a second request for waiver as directed by the Owner.
- f. If the CONSULTANT does not submit a Utilization Plan, remedy deficiencies in a Utilization Plan, submit a request for waiver, or if the Owner determines that the Utilization Plan does not indicate that the MBE/WBE/SDVOB participation goals will be met and/or that the CONSULTANT has failed to document good faith efforts, the Owner may disqualify the CONSULTANT as being not-responsible.
- g. The CONSULTANT shall make every effort to utilize, in good faith, any MBE, WBE, or SDVOB identified within its Utilization Plan, as approved by the Owner, at least to the extent indicated in the approved Plan.

2) Administration Hearing on Disqualification

- a. If the Owner disqualifies a CONSULTANT for any of the reasons set forth in 11.2.5 above, the CONSULTANT shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the Owner to review the determination of disqualification and non-responsibility of the CONSULTANT.
- b. The hearing officer's determination shall be the final determination of the Owner. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within 30 days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.

3) Good Faith Efforts

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

All firms selected to perform on DASNY contracts, that included MBE/WBE/SDVOB requirements, should use these Guidelines for the preparation of MBE/WBE and SDVOB Utilization Plans and all supporting "good faith efforts" documentation. If your firm incurs difficulty in meeting your Minority and Women-owned Business Enterprises, or

Service-Disabled Veteran-Owned Business (MBE/WBE/SDVOB) goals, these Guidelines can be utilized to assist your firm in preparing the required documentation.

Responses to information in the Guidelines should be given in an item-by-item format following the numerical sequence as presented and submitted with your Request for Waiver to the Opportunity Programs Group. If you fail to adequately document and respond to each item, it may result in a finding of non-compliance.

If you need assistance, please contact OPG at (518) 257-3706 (Upstate) or (212) 273-5038 (Downstate).

GUIDELINES

1. Attach a copy of the completed Utilization Plan in accordance with MBE/WBE/SDVOB goals established in the Contract Documents.
2. Submit a written request for a referral list of M/WBE's certified by NYS Empire State Development or SDVOB's certified by OGS Division of Service-Disabled Veteran's Business Development by trade or service from the Opportunity Programs Group for subcontracting and procurement opportunities.
3. Provide a record of written solicitations made to certified MBE/WBE/SDVOB's obtained from the NYS Empire State Development directory of certified businesses located at: <https://ny.newnycontracts.com> and the directory of OGS Division of Service-Disabled Veteran's Business Development certified businesses located at: <http://www.ogs.ny.gov/Core/SDVOBA.asp>. Include dates and copies of solicitations made.
4. Contact all the NYS Empire State Development certified MBE/WBEs and OGS Division of Service-Disabled Veteran's Business Development certified SDVOB's posted in the list of interested subcontractors and suppliers posted on the DASNY's website: <http://www.dasny.org/construc/bidops/03C2.php>.
5. Provide a record of advertisements placed in general circulation, trade and minority and women oriented publications. Include the name of publications and dates of advertisements.
6. Submit documentation that clearly demonstrates that you contacted all the MBE/WBE/SDVOB's identified through the outreach activities outlined above to determine their capacity to perform the applicable scope of work.
7. Provide a record of ALL responses received from NYS certified minority and women-owned business enterprises and OGS certified service-disabled veteran-owned businesses to any such advertisements and solicitations made. Include dates and copies of any written responses.
8. Provide a list of any pre-bid, pre-award, or other meetings attended with NYS certified minority or women owned businesses or OGS certified service-disabled veteran-owned businesses.
9. List the efforts undertaken to subdivide portions of the work into smaller components in order to increase NYS certified minority and women-owned business enterprise participation or OGS certified service-disabled veteran-owned business participation.
10. Did your firm solicit any NYS certified minority and women-owned business enterprises or OGS certified service-disabled veteran-owned businesses located outside the region where the scope of work is to be performed? If so, what actions were taken to contact and assess the financial ability of those firms to participate?
11. Provide a description of all relevant contract documents, plans or specifications, or documents describing the scope of work which was made available to NYS certified minority and women-owned business enterprises or OGS certified service-disabled veteran-owned businesses for the purposes of soliciting their bids. Include the dates and manner in which these documents were made available.

12. Were the same subcontract terms and conditions offered to NYS certified minority and women-owned business enterprises and OGS certified service-disabled veteran-owned businesses as those offered in the ordinary course of business and to other subcontractors?
13. Did your firm engage in direct in person or telephone negotiations with NYS certified M/WBE firms or OGS certified SDVOB firms where quotes originally submitted were deemed as too high?
14. Has your firm made payments for work performed by NYS certified minority and women-owned business enterprises or OGS certified service-disabled veteran-owned businesses in a timely fashion for past work so as to facilitate continued performance by the certified businesses?
15. List any special considerations and/or concerns, which are preventing adequate NYS certified minority and women-owned business enterprises or OGS certified service-disabled veteran-owned businesses to participate.

4) Compliance Reports and Equal Employment Opportunity Workforce

The CONSULTANT shall submit a completed *Compliance Report* with each *Professional Services Contract Payment Requisition* submitted to the Owner for each work authorization payment regardless of dollar value. The Compliance Report must be signed and notarized or it will not be accepted. *Compliance Reports* not submitted at such times as required by the Owner shall be cause for the Owner to delay implementing scheduled payments to the CONSULTANT.

The CONSULTANT and all sub-consultants are required to submit a completed *E.O. 162 Workforce Utilization Report* for contracts with a total contract value of Twenty-Five Thousand 00/100 Dollars (\$25,000.00) or more. The CONSULTANT is responsible for collecting reports from each sub-consultant performing work on the contract, ensuring that the sub-consultants submits the report as required. All *E.O. 162 Workforce Utilization Reports* are to be submitted within 10 days of the end of each quarter. The *E.O. 162 Workforce Utilization Report* is posted on DASNY's website at <https://www.dasny.org/tools-forms/forms>, and can be found by going to MWSBE – Forms. The completed reports are to be submitted to DASNY's Opportunity Programs Group by emailing the Excel workbook files to EO162Reporting@dasny.org. Hard copies of the reports will not be accepted.

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

- a. If the CONSULTANT, after making good faith efforts, is unable to comply with the MBE/WBE/SDVOB participation goals, the CONSULTANT may submit a request for a partial or total waiver at the same time it submits its Utilization Plan by adding a justification statement in step 3 of the submittal in the NYS Contract System. Additional documentation of good faith efforts may be required upon review by DASNY. If the documentation required with the request for waiver is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- b. If the Owner, upon review of the CONSULTANT's Utilization Plan and compliance reports, determines that the CONSULTANT is failing or refusing to comply with the MBE/WBE/SDVOB participation goals, and no waiver has been issued in regards to such non-compliance, the Owner may issue a notice of deficiency to the CONSULTANT. The CONSULTANT must respond to the notice of deficiency within seven days of receipt. Such response may include a request for partial or total waiver of MBE/WBE/SDVOB participation goals.

6) Complaints and Arbitration

- a. Subsequent to the award of this Contract for Professional Services, if the CONSULTANT submits a request for waiver of MBE/WBE/SDVOB participation goals and the Owner denies the request or fails to respond in any way within 20 days of receiving it, or if the CONSULTANT has received a written determination from the Owner that the CONSULTANT is failing or refusing to comply with goals, the CONSULTANT may file a complaint with the Director, Division of Minority and Women's Development in the Department of Economic Development ("Director"), according to the provisions of Section 316 of the Executive Law. The complaint must be filed within 20 days of the Owner's receipt of the request for waiver, if the Owner has not responded in that time, or within 20 days of a notification that the request has been denied by the Owner or within 20 days of receipt of notification from the Owner that the CONSULTANT is failing or refusing to comply with goals.
- b. If the CONSULTANT fails or refuses to comply with goals for participation by MBEs/WBEs and SDVOBs, as established by this Contract for Professional Services, the Owner may file a complaint with the Director pursuant to Section 316 of the Executive Law.
- c. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
- d. The party filing a complaint, whether the CONSULTANT or the Owner, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
- e. Upon receipt of a complaint the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within 30 days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the Owner and the CONSULTANT, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.
- f. Upon conclusion of the arbitration proceeding, the arbitrator will submit to the Director his or her award regarding the alleged violation of the Contract For Professional Services or refusal of the Owner to grant a waiver request by the CONSULTANT. The award of the arbitrator with respect to the alleged violation of the Contract or the refusal of the Owner to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.
- g. Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either (i) adopt the recommendation of the arbitrator; (ii) determine that no sanctions, fines or penalties should be imposed; or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty.
- h. The Director, within ten days of receipt of the arbitrator's award and recommendations, will issue a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

- i. The determination of the Owner or the CONSULTANT to proceed with a complaint shall not preclude the Owner, in its discretion, from pursuing any other remedies which it may have pursuant to law and contract, including withholding from payments to the CONSULTANT the estimated amount of the fines and penalties which may be imposed pursuant to Subparagraphs 11.7.7 and 11.7.8 of this Chapter Three. Said amounts shall be the difference between the planned dollar amount of MBE/WBE, or SDVOB, sub-contract awards and the actual dollar amount of such awards.
- j. In lieu of the complaint procedures set forth in paragraphs 11.7.1 – 11.7.9 of this Article, if the Owner determines that the CONSULTANT willfully and intentionally fails to comply with the requirements of this Article, the CONSULTANT shall be obligated to pay to the Owner liquidated damages in an amount not to exceed two hundred thousand dollars (\$200,000) to compensate the Owner for estimated expenses that would otherwise be incurred by the Owner to enforce the provisions of this Article and Article 15-A and 17B of the Executive Law, including enforcement proceedings against the CONSULTANT pursuant to Section 316 of the Executive Law. The CONSULTANT shall pay such liquidated damages to the Owner within sixty (60) days after they are assessed by the Owner unless prior to the expiration of such sixtieth day, the CONSULTANT shall file a complaint with the Director pursuant to Section 316 of the Executive Law.

7) **Subcontracts**

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

8) **Forms**

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

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

for each separate work authorization.

- f. **Standard Equal Employee Opportunity Policy Statement:** the CONSULTANT shall submit to the Owner one completed form prior to the initial contract award. The form is not needed for each separate work authorization.

18. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE AND CONTINUING INTEGRITY

- A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.
- B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the 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.
- D. The CONSULTANT shall at all times during the Contract term remain responsive and responsible. The CONSULTANT shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term the CONSULTANT agrees, if requested by the President of the Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The CONSULTANT shall immediately notify Owner of any material or adverse information pertaining to the CONSULTANT or any Subconsultant, regardless of tier.
- E. The President of the Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of the Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- F. Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the President of the Owner or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of the Owner or his or her designee to be non-responsible. In such event, the President of the Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

- G. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall consider whether the proposed Subconsultant or Subcontractor 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.
- H. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall also consider whether the proposed Subconsultant or Subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Work on the Project.
- I. Prior to award of a Contract, the CONSULTANT shall require any Subconsultant or Subcontractor, with a subcontract value of two million dollars (\$2,000,000) or greater, to submit to the Owner a certified NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for review. At any time during the term of the Contract, the Owner may request, and the CONSULTANT, Subconsultant or Subcontractor shall provide, a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for any Subcontractor performing Work on the Project for review. Additionally, the Owner or CONSULTANT may require a Subconsultant or Subcontractor to update, recertify and resubmit a previously submitted NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) to the Owner upon request. Refer to General Conditions Article 19 – Executive Order No. 125.

19. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANT S

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, CONSULTANT, attorney, engineer, inspector or CONSULTANT of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the *Public Officers Law* expressly prohibits the CONSULTANT, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.
In addition to the prohibition of Section 73 (5) of the Public Officers Law, DASNY has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the CONSULTANT and its agents should refrain from offering or giving anything of value to an employee of the Owner. Employees of the Owner may not solicit any gift, gratuity, stipend or thing of value from the CONSULTANT or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.
- C. To promote a working relationship with the Owner based on ethical business practices, the CONSULTANT is expected to:

- 1) furnish all goods, materials and services to the Owner as contractually required and specified,
 - 2) submit complete and accurate reports to the Owner and its agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from the Owner or its agents that provides an unfair advantage over a competitor,
 - 4) not engage in any activity or course of conduct that restricts open and fair competition on Owner-related projects and transactions,
 - 5) not engage in any course of conduct with Owner employees or its agents that constitutes a conflict of interest, in fact or in appearance, and
 - 6) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the CONSULTANT to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the CONSULTANT may employ relatives of Owner employees, the Owner must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Owner reserves the right to request that the CONSULTANT modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The CONSULTANT may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of *two years* following their separation from service with the Owner. In addition, former employees of the Owner are subject to a "*lifetime bar*" from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Owner.
- G. The CONSULTANT agrees to notify the Owner's Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Owner that is inconsistent with the contents of this Section.
- H. Any violation of these provisions shall justify termination of this Contract and may result in Owner's rejection of the CONSULTANT's bids or proposals for future contracts.
- I. Consultant shall at all times during the Contract term remain responsible. Consultant agrees, if requested by the President of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- J. The President of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of Consultant. In the event of such suspension, Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Consultant must comply with the terms of the suspension order. Contract activity may resume at such time as the President of Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- K. Notwithstanding any other provision of this Contract, upon written notice to Consultant, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the President of Owner or his or her designee at Consultant's expense where Consultant is determined by the President of Owner or his or her designee to be non-responsible. In such event, the President of Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

- L. By entering into this Contract, Consultant certifies, under the penalties of perjury, that Consultant is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. Consultant further certifies that Consultant will not utilize on this Contract any Subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.
- M. During this Contract, should Owner receive information that a person (as defined in New York State Finance Law §165-a) is in violation of the above-referenced certifications, Owner will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Owner shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Consultant in default.

20. COOPERATION WITH INVESTIGATIONS

The CONSULTANT agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Professional Integrity (“OPI”) of the OWNER or any other duly authorized representative of the OWNER (“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; Subcontractor, CONSULTANT and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. At the 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 Subcontractor, CONSULTANT, or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The CONSULTANT shall assist the OPI or the Representative in obtaining access to past and present Subcontractor, CONSULTANT, and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, CONSULTANT’s and suppliers 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 Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, CONSULTANT’s and suppliers, in connection with the Contract, a right-to-audit clause in favor of the OWNER conferring rights and powers of the type outlined in this section. The CONSULTANT shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision.

The CONSULTANT shall not make any payments to a Subcontractor, CONSULTANT or supplier 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 the OWNER's rejection of the CONSULTANT's bids or proposals for future contracts.

21. FALSE STATEMENTS/INFORMATION

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

22. INVALID PROVISIONS

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

23. CONFLICTING TERMS

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

24. GREEN AND CLEAN STATE BUILDINGS

- A. The CONSULTANT shall, to the maximum extent practicable, follow guidelines for the construction of "Green Buildings" including, but not limited to, DASNY's Sustainability Policy, guidelines set forth in Tax Law Section 19, which created the Green Buildings Tax Credit and the United States Green Building Council's (USGBC) LEED (Leadership in Energy and Environmental Design) rating system, in all buildings as applicable.
- B. The CONSULTANT shall be required to demonstrate compliance to the maximum extent practicable, with the New York State Green Building Construction Act (GBCA, enacted in 2009), affecting state owned facilities and with the New York State Executive Order 88. The GBCA calls for LEED submission, benchmarking, energy and water use reporting and air quality reporting based on building size and use. Under EO #88 buildings across the state owner entity's full portfolio shall increase energy efficiency by twenty (20) percent in seven years relative to established energy use index baselines as required.
- C. The CONSULTANT shall incorporate energy-efficient criteria consistent with ENERGY STAR and any other energy efficiency levels as may be designated by the New York State Energy Research and Development Authority (NYSERDA) into all specifications developed for new construction and renovation.
- D. The CONSULTANT shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the CONSULTANT in analyzing the design and providing recommendations to maximize energy efficiency and to promote the eligibility

of the capital cost incentives included in NYSERDA's New Construction Program. Assistance shall include any requisite modeling and other requisite analysis. Costs of these services are part of the CONSULTANT's service requirements.

25. 2005 PROCUREMENT LOBBYING LAW

- A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of and agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.
- B. For any contract \$15,000 or more each proposer shall submit, with its proposal, on the form provided herewith, SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k. The information contained in SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k will serve as an informational resource to aid the Owner in making an award determination.
- C. The Owner reserves the right to terminate this contract in the event it is found that the certification filed by the CONSULTANT in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its termination right, such termination constituting a termination for cause, by providing written notification to the CONSULTANT in accordance with the terms of Article 5.1 of this Contract – Termination for Cause.

26. NONCOMPLIANCE

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