

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 has requested the CONSULTANT to provide Bridging Document Consulting Services for the Staten Island Family Court Consolidation Project, hereinafter referred to as the Project; and

WHEREAS, the OWNER and the CONSULTANT have agreed upon the amount of compensation, and a Date of Completion for the Project.

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

ARTICLE I: CONSULTANT'S SERVICES

The CONSULTANT's Services shall consist of all the services required by Appendix "A", entitled **SCOPE OF SERVICES OF CONSULTANT**, which is attached to and made a part hereof.

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 V.B.

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 V.B.

ARTICLE IV: PERSONNEL AND CONSULTANTS

A. The CONSULTANT shall prepare and submit to the OWNER, for attachment hereto as Appendix D, the CONSULTANT's Personnel Chart that lists by name, job category and responsibility the CONSULTANT's technical employees who will work on the Project,

identifying any deviations from the personnel proposed in the CONSULTANT's Response to the OWNER's Request for Proposal and the reasons therefore. OWNER shall not permit any change from the personnel proposed in the CONSULTANT's Response to the OWNER's Request for Proposal unless the CONSULTANT provides an explanation acceptable to OWNER and replacement personnel acceptable to OWNER. If the CONSULTANT fails to provide an explanation acceptable to OWNER and replacement personnel acceptable to OWNER, the OWNER may rescind award of the Contract for Professional Services. Once this Contract for Professional Services is effective, the CONSULTANT shall promptly inform the OWNER in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). OWNER shall not permit any change in the CONSULTANT's Personnel Chart unless the CONSULTANT provides an explanation acceptable to OWNER and replacement personnel acceptable to OWNER. If the CONSULTANT fails to provide an explanation acceptable to OWNER and replacement personnel acceptable to OWNER, OWNER may terminate this Contract for Professional Services for cause. The OWNER shall have the right to reject any and all proposed replacement personnel.

B. The CONSULTANT shall (i) prepare and submit to the OWNER for attachment hereto as Appendix E, the CONSULTANT's Subconsultants Chart which lists by name and general duties each Subconsultant retained by the CONSULTANT who will provide services with respect to the Project, and the names of technical employees in each Subconsultant's firm who will be performing services on behalf of the Subconsultant; (ii) not enter into any agreement with any Subconsultant to which the OWNER raises a timely objection; and, (iii) promptly inform the OWNER in writing of any proposed replacements, the reasons therefor, and the name(s) and qualification(s) of proposed replacement(s). OWNER shall not permit any change from the Subconsultants and Subconsultant's technical employees proposed in the CONSULTANT's Response to the OWNER's Request for Proposal unless the CONSULTANT provides an explanation acceptable to OWNER and replacement acceptable to OWNER. If the CONSULTANT fails to provide an explanation acceptable to OWNER and replacement acceptable to OWNER, OWNER may rescind award of the Contract for Professional Services. Once this Contract for Professional Services is effective, the CONSULTANT shall promptly inform the OWNER in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). OWNER shall not permit any change in the CONSULTANT's Subconsultants and Subconsultant's technical employees unless the CONSULTANT provides a explanation acceptable to OWNER and replacements acceptable to OWNER. If the CONSULTANT fails to provide an explanation acceptable to OWNER and replacements acceptable to OWNER, OWNER may terminate this Contract for Professional Services for cause. The OWNER shall have the right to reject any proposed replacement. If CONSULTANT enters into an agreement for this Project with any Subconsultant to which the OWNER has objected, the OWNER may rescind award of the Contract for Professional Services or terminate this Contract for Professional Services for cause.

C. The OWNER may retain a sub-consultant(s) to furnish services throughout the term of this Contract, and the CONSULTANT shall cooperate with said sub-consultant(s).

D. The CONSULTANT may propose and engage sub-consultants, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed sub-consultant and, in such event, the CONSULTANT shall propose another sub-consultant 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 sub-consultant. The fees of any sub-consultants retained by the CONSULTANT for Services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1. The fees of any sub-consultants retained by the CONSULTANT for services required under Article III shall be paid as outlined in Article V.B.

E. The CONSULTANT shall pay its sub-consultants 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.

ARTICLE V: PROVISION FOR PAYMENT

MAXIMUM AMOUNT PAYABLE

The OWNER shall pay, and the CONSULTANT agrees to accept, as full compensation for all Services pursuant to this Contract, the not to exceed amount of _____ and 00/100 Dollars (\$ 0). Appendix "B", entitled **SUMMARY OF PAYMENTS**, is attached to and made a part hereof.

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 payroll copy, and other appropriate backup. Payroll copy shall show the names and rates of pay of all personnel performing services during the payment period, and their position classification. Only said form shall be used for reimbursement of Services.

The CONSULTANT is required to submit payment requests to the OWNER, on behalf of subconsultants, within 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.

A. CONSULTANT'S SERVICES

1. Original Scope of Services

The OWNER shall pay, and the CONSULTANT agrees to accept, as compensation for Original Scope of Services pursuant to Appendix "A", which is attached to and made a part hereof, the not to exceed amount of _____ and 00/100 Dollars (\$ 0).

Compensation, at the completion of all work provided in the Scope of Services, shall be paid in accordance with the following schedule.

(Insert Payment Milestones)

B. ADDITIONAL SERVICES AND EXTRA WORK

Payment for Additional Services and Extra Work 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. Direct Salary of employees, other than Principals, times an approved multiple. Multiplier must be supportable by appropriate audit. Appendix "C", entitled **SCHEDULE OF TECHNICAL CLASSICATIONS AND HOURLY RATES**, is attached to and made a part hereof.
- b. Direct Salary as used herein shall be the payroll cost of salaries or wages paid directly to technical employees of the CONSULTANT or sub-consultants employed on the Project, supportable by payroll copy or appropriate audit. Compensation shall be based on the actual hourly rate and actual hours worked by the employee excluding travel time.
- c. 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.
- d. Specific Approved Reimbursable Expenses.

ARTICLE VI: REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the compensation for the Original Scope of Services and include the actual expenditures supported by detail receipts/documentation made by the CONSULTANT or the CONSULTANT's sub-consultants, as approved by the OWNER. Total reimbursement for said Reimbursables shall Not Exceed _____ and 00/100 Dollars (\$ 0). Said reimbursement shall be limited to those specific items listed below.

(Insert Specific Reimbursable Line Items)

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.policyworks.gov/perdiem).

- B. Long-distance telephone calls;
- C. Fees paid to authorities having jurisdiction over the Project;
- D. Reproductions, postage, and handling of drawings, specifications, and other documents for the interim submissions (for OWNER's review and approval provide complete sets of documents, as requested by the OWNER, at the completion of all Phases of the Project. [Pre-Schematic, Schematic, Design Development, Bid Documents and 100% Construction Documents], EXCLUSION: reproductions for the office use of the CONSULTANT and its sub-consultants;
- E. Overtime work requiring higher than regular rates when authorized in advance by the OWNER;
- F. Expense of renderings or models for the OWNER's use; and
- G. Film and film processing.

ARTICLE VII: 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:

1. to assure payment of just claims of any persons supplying labor or materials for the Work;
2. to protect the OWNER from loss due to defective Work not remedied;
3. to protect the OWNER, Client, 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; or

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

ARTICLE VIII: 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 IX: 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 X: 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 X 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 X, 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 X, 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 X 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 XI: HOLD HARMLESS

The CONSULTANT hereby agrees to indemnify and hold harmless the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CONSULTANT and shall pay any judgment or expense, including interest, imposed against any of them for injury, wrongful death or property damage, and to defend and pay the costs and expenses thereof, any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the OWNER, the

Client, or the OWNER's members, officers, employees, or representatives, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CONSULTANT the percentage of defense costs which the CONSULTANT incurred based upon an apportionment of the OWNER's allocated responsibility.

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

The CONSULTANT shall maintain, and shall keep for a period of six 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.

ARTICLE XIII: ERRORS AND OMISSIONS

The CONSULTANT agrees that the cost to the CONSULTANT for corrections to the Contract Documents necessitated by design errors or omissions shall be part of the CONSULTANT's fee for **Original Scope of Services** and part of Original Reimbursables as established herein. Extra costs to the OWNER resultant from design errors or omissions may be recoverable from the CONSULTANT and its professional liability insurance carrier. Acceptance of the Contract Documents by the OWNER for purpose of bidding shall not relieve the CONSULTANT of any responsibility for design deficiencies, omissions or errors.)

ARTICLE XIV: TIME OF COMPLETION

The CONSULTANT shall perform Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

The CONSULTANT shall complete all Services on or before

ARTICLE XV: 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 XVI: APPENDIX "G" ADDITIONAL ITEMS

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

ARTICLE XVII – M/WBE & SDVOB CONTRACT GOALS

The N.Y.S. certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) goals for this contract are 18% MBE, 12% WBE and 6% SDVOB. The goals refer to the utilization of M/WBE and

SDVOB 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 XVIII: 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.

SAMPLE

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: _____

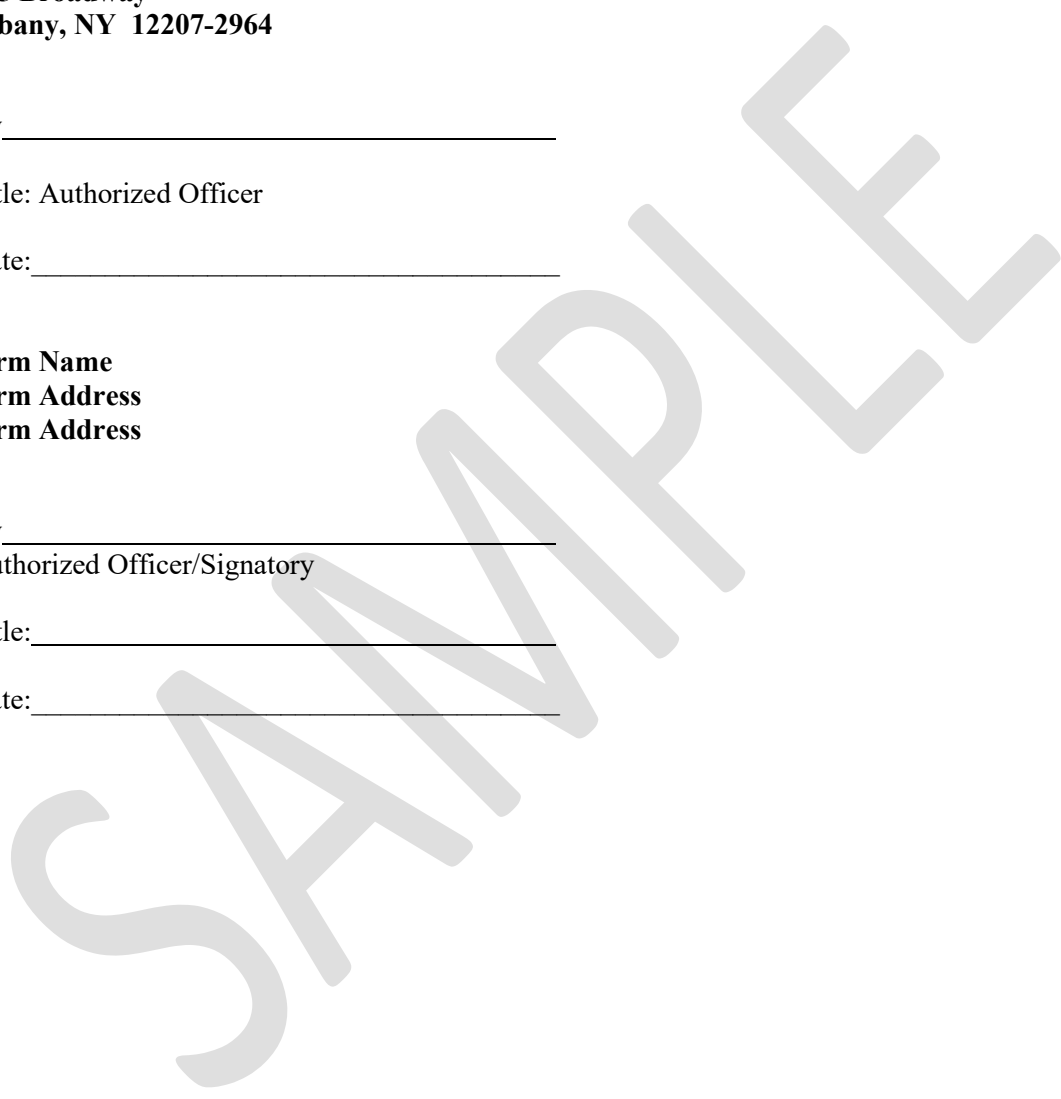
Firm Name
Firm Address
Firm Address

By _____

Authorized Officer/Signatory

Title: _____

Date: _____



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

The services are to be performed in the following sequence of steps, each requiring written authorization before proceeding:

1. Programming Phase

- a. Validate, refine, and develop the building program based on client need as determined during programming meetings. Include a project development timeline and document production schedule. Complete the building program to the extent necessary to fully define space requirements, required adjacencies and proximities needed to fully develop the new facility.
- b. Review and confirm the validity and sufficiency of the prior technical tests and studies. Conduct additional existing conditions, underground utilities, and geotechnical surveys as may be required.

2. Conceptual Design, Project Estimates and Schedule

- a. Identify and document all regulatory and approval processes and measures required for the project.
- b. Review and evaluate existing site to coordinate development of infrastructure including sewer, water, gas, power, storm drainage, and communication systems.
- c. Analyze and develop criteria for building systems including plumbing, electrical, mechanical, architectural, and structural relative to performance and cost. Address any sustainability measures.
- d. Develop and prepare floor plans, illustrating room functions, with rough dimensions, cross sections, exterior elevations, and the type of construction proposed.
- e. Prepare design concept approaches working with NYC Landmarks Commission for the architectural design of the new addition. Approach options are to consider issues of differentiation and compatibility of new to old. This shall consider design concept options involving approaches of literal replication versus inventive appearance without direct replication versus creating a level of abstraction of historic styling versus an intentional contrast of the new to old. Design concept options are to be discussed/presented at informal staff level to understand the appropriate aesthetic design approach/direction that the Design-Build architect of record will be guided by.
- f. Prepare a report of probable construction costs and a construction timeline with key milestone dates including delivery of design and construction documents. Major project components, including building systems, shall be defined with their related budget estimates.
- g. Meet with designated DASNY and all Stakeholders personnel to review design and project estimates. Make corrections and changes as requested.
- h. Submit a copy of the conceptual design, project cost estimate report, and schedule, to DASNY and all Stakeholders for review and approval.

3. Final Bridging Documents, Project Estimates and Schedules

- a. Prepare the final bridging documents including but not limited to drawings and preliminary specifications, as required to delineate the OWNER's project requirements for design/builder's compliance and conformance. The design shall consist of floor plans, elevations, cross sections, landscaping plan, site and grading plans, site survey and other drawings to scale and showing the location of walls, doors, windows, equipment fixtures and other necessary items. The design shall also include requirements for the plumbing, air-conditioning, heating, electrical and other work needed to complete the project. Ensure the specifications that are provided are at a minimum, consistent with a schematic design level submission.
- b. Define performance criteria and distribution systems for electrical and mechanical system components.
- c. Define performance criteria and distribution systems for security systems including locking devices, cameras, interface with BMS systems, interface with existing systems and other systems as required.
- d. Prepare opinion of probable construction cost of building systems and components including all related costs and estimated contingencies.
- e. Identify planning entitlements and permits required, prepare applications, and make presentations describing the project as needed.
- f. Prepare construction specifications in CSI/UCI 16 Division Format, or equivalent, including work sequence schedule in Division 1, General Requirements.
- g. Designer will work with the OWNER to define specific goals and objectives as it pertains to Sustainability such as maximizing energy efficiency, the use of renewable energy measures, and the reduction of reliance on fossil fuel.
- h. Prepare supporting documentation such as a LEED Checklist or comparable documentation for other tracking systems as may be required.
- i. Establish a cooperative, consultative relationship with NYC DOB. Seek regulatory requirements from entities including but not limited to New York City Fire Department (FDNY), Public Design Commission (PDC), Landmarks Preservation Commission, Percent for Art, etc. Attend meetings designed to obtain comments regarding regulatory requirements and design quality that responds to neighborhood context and expresses civic character in the public realm.
- j. Submit copies of final bridging documents and project cost estimate report, to DASNY and all Stakeholders for review and approval.

4. Design/Build Contractor Team Solicitation and Award

- a. Assist DASNY/Stakeholder Team with preparation of evaluation criteria, bid forms, notice to bidders, procurement instructions, and general and supplemental instructions as they apply to the project.
- b. Attend a pre-bid conference scheduled by the DASNY/Stakeholder Team.
- c. Assist with responding to RFI's, as requested by the OWNER.
- d. Assist the DASNY/Stakeholder Team in evaluating bids and determining lowest responsible bidder, as requested by the OWNER.

5. Design/Build Design Phase

- a. Attend design meetings, as requested by the OWNER.
- b. Review drawings and specifications submittals including equipment and systems data, and product data, etc. to assure compliance with project parameters, bridging and design/build contract documents, as requested by the OWNER.

- c. Review cost estimate and schedule submittals to assure compliance with project parameters, bridging and design/build contract documents, as requested by the OWNER.
- d. Make recommendations to the OWNER or Design/Build Contractor Team related to the compliance of the Design/Builder Contractor Team's proposed plans, drawings, specifications, equipment and systems with project parameters, bridging, and design/build contract documents.

6. Design/Build Construction Phase

- a. Attend pre-construction meeting.
- b. Review submittals including equipment data, shop drawings, and product data to assure compliance with contract documents.
- c. Make recommendations to DASNY/Stakeholder Team on all claims of DASNY/Stakeholder or construction contractor and all other matters relating to the execution and progress of work, including interpretation of the Architect's documents.
- d. Observe construction regularly and at key dates including startup and testing of equipment.
- e. Verify completion of punch-list items and prepare supplementary punch-lists.
- f. Review project closeout submittals from contractor including drawings, operations, and maintenance manuals and data, and warranties.
- g. Certify substantial completion, final completion, and final payment to contractor.

APPENDIX "B"

SUMMARY OF PAYMENTS

<u>MAXIMUM AMOUNT PAYABLE</u>		\$ 0 NTE
A. <u>CONSULTANT'S SERVICES</u>		\$ 0 LS
1. <u>Original Scope of Services</u>	\$ 0 LS	
B. <u>REIMBURSABLES</u>		\$ 0 AE

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 payroll copy, and other appropriate backup. Payroll copy shall show the names and rates of pay of all personnel performing services during the payment period, and their position classification. Only said form shall be used for reimbursement of Services.

NTE = Not to Exceed
LS= Lump Sum
AE = Actual Expense

APPENDIX "C"

SCHEDULE OF TECHNICAL CLASSIFICATIONS AND HOURLY RATES

The following is a listing of Technical Classifications and Hourly Rates associated with this Project. Changes in Rates, Classifications or Personnel must be verified by payroll records/audit and have the prior approval of the OWNER before payment can be authorized.

Schedule of Technical Classifications and Hourly Rates for use with Additional Services and Extra Work of the CONSULTANT, pursuant to Article V.B.:

<u>Technical Classifications</u>	<u>Direct Salary Rate</u>
Project Consultant/Engineer/Manager	\$ _____
Consultant 1 / Engineer 1	_____
Consultant 2 / Engineer 2	_____
Mechanical/Electrical Engineer	_____
Drafter	_____
Specifications Writer	_____
Shop Drawing Reviewer	_____

APPENDIX "D"
CONSULTANT'S PERSONNEL CHART

SAMPLE

APPENDIX “E”

CONSULTANT’S SUB-CONSULTANT CHART

SAMPLE

APPENDIX "F"

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.

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

SAMPLE

APPENDIX "G"

ADDITIONAL ITEMS

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1. LABOR LAW PROVISIONS

- A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in performance of the Work.
- B. The PROFESSIONAL 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 PROFESSIONAL, 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL agrees that, in case of underpayment of wages to any worker engaged in the Work by the PROFESSIONAL or any Subconsultant, the OWNER shall withhold from the PROFESSIONAL, 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 PROFESSIONAL to the employees to whom said amount is due. The PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL, nor any person acting on behalf of said PROFESSIONAL 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 PROFESSIONAL, nor any person on behalf of said PROFESSIONAL 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 PROFESSIONAL, 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 PROFESSIONAL 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 PROFESSIONAL agrees as follows:

- A. The PROFESSIONAL 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 PROFESSIONAL will send to each labor union or representative of workers with which the PROFESSIONAL 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 PROFESSIONAL's Contract under clauses A. through G. (hereinafter called "nondiscrimination clauses"). If the PROFESSIONAL was directed to do so by the contracting agency as part of the proposal or negotiation of this Contract, the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL will state, in all solicitations or advertisements for employees placed by or on behalf of the PROFESSIONAL, 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 PROFESSIONAL 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 PROFESSIONAL'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 PROFESSIONAL has not complied with these nondiscrimination clauses, and the PROFESSIONAL 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 PROFESSIONAL satisfies the State Commissioner of Human Rights that the PROFESSIONAL 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 PROFESSIONAL, and an opportunity has been afforded the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL shall comply fully with all applicable laws, rules, and regulations.

5. CONTRACT DEEMED EXECUTORY

The PROFESSIONAL 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 PROFESSIONAL may not use the drawings and specifications for any purpose not relating to the Project without the OWNER's consent. The PROFESSIONAL may retain such reproductions of drawings and specifications as the PROFESSIONAL may reasonably require. Upon completion of the Work or any early termination of this Contract, the PROFESSIONAL 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 PROFESSIONAL'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 PROFESSIONAL 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 PROFESSIONAL (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 PROFESSIONAL initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the PROFESSIONAL fails to initiate cure upon the request of the OWNER and continue such cure until complete, the OWNER may give notice to the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL until completion of the Project. At such time, the PROFESSIONAL'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 PROFESSIONAL'S compensation shall be reduced by all costs and damages incurred by the Owner as a result of the default of the PROFESSIONAL.

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

13. LATE PAYMENT

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

14. DEATH OF THE PROFESSIONAL

If the PROFESSIONAL is an individual and that PROFESSIONAL shall die prior to the said completed performance of this Contract, then the payment to the estate of said PROFESSIONAL, 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 PROFESSIONAL. If the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL relating to the Project, all plans

and specifications in regard to the Project, and shall have a right to retain the services of another PROFESSIONAL to complete the Project. If the PROFESSIONAL is a professional or other corporation, then this paragraph shall not be applicable.

15. OWNER-PROFESSIONAL RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

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

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

A. The Professional 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 Professional 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 Professional must submit to the Owner, and the Professional's prospective sub-consultants must submit to the Professional, 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional's Required Services which the Owner has determined can be reasonably structured by the Professional 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 Professional 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 Professional and direct the Professional 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 Professional 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 Professional may submit a second request for waiver as directed by the Owner.
- f. If the Professional 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 Professional has failed to document good faith efforts, the Owner may disqualify the Professional as being not-responsible.
- g. The Professional 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 Professional for any of the reasons set forth in 11.2.5 above, the Professional 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 Professional.
- b. The hearing officer's determination shall be the final determination of the Owner. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within 30 days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.

3) Good Faith Efforts

In order to show that it has made good faith efforts to comply with the MBE/WBE/SVOB participation goals of this Contract, the Professional

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 Professional 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 Professional.

The Professional 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 Professional 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) PROFESSIONAL's Failure to Meet M/WBE Participation Goals

- a. If the Professional, after making good faith efforts, is unable to comply with the MBE/WBE/SDVOB participation goals, the Professional 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 Professional's Utilization Plan and compliance reports, determines that the Professional 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 Professional. The Professional 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 Professional 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 Professional has received a written determination from the Owner that the Professional is failing or refusing to comply with goals, the Professional 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 Professional is failing or refusing to comply with goals.

- b. If the Professional 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 Professional 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 Professional, 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 Professional. 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 Professional 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 Professional 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 Professional willfully and intentionally fails to comply with the requirements of this Article, the Professional 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 Professional pursuant to Section 316 of the Executive Law. The Professional 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 Professional shall file a complaint with the Director pursuant to Section 316 of the Executive Law.

7) Subcontracts

The Professional 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 Professional 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 Professional 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 Professional shall submit a completed, updated report with each Application for Payment request for each individual work authorization.
- d. **Quarterly Work Force Utilization Report:** the Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional shall at all times during the Contract term remain responsive and responsible. The Professional shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term. The Professional 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 Professional shall immediately notify Owner of any material or adverse information pertaining to the Professional 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 Professional. In the event of such suspension, the Professional will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Professional 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 Professional, 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 Professional's expense where the Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional, 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 Professional 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 - PROFESSIONALS

- 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, PROFESSIONAL, attorney, engineer, inspector or PROFESSIONAL of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the *Public Officers Law* expressly prohibits the PROFESSIONAL, 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 Professional 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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.
- F. The PROFESSIONAL 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.
- G. Any violation of these provisions shall justify termination of this Contract and may result in Owner’s rejection of the PROFESSIONAL’s bids or proposals for future contracts.
- H. 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.
- I. 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.

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

The PROFESSIONAL shall grant the OIA or the Representative the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the PROFESSIONAL, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the PROFESSIONAL, relating to the PROFESSIONAL. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Subcontractor, PROFESSIONAL and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records.

At the OIA's or the Representative's request, said materials shall be provided in a computer readable format, where available. At the request of the OIA or the Representative, the PROFESSIONAL shall execute such documents, if any, as are necessary to give the OIA or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the PROFESSIONAL but not currently in the PROFESSIONAL's physical possession. The PROFESSIONAL shall not enter into any agreement with a Subcontractor, PROFESSIONAL or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The PROFESSIONAL shall assist the OIA or the Representative in obtaining access to past and present Subcontractor, PROFESSIONAL and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, PROFESSIONALS and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

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

The PROFESSIONAL shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, PROFESSIONALS and suppliers, in connection with the Contract, a right-to-audit clause in favor of the OWNER conferring rights and powers of the type outlined in this section. The PROFESSIONAL shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision.

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

Any violation of the provisions of this Article shall justify termination of this Contract and may result in the OWNER's rejection of the PROFESSIONAL'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

24.1 The Professional 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.

24.2 The Professional 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.

24.3 The Professional 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.

24.4 The Professional shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the Professional 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 professional’s service requirements.

25. 2005 PROCUREMENT LOBBYING LAW

- 25.1** 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.
- 25.2** 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.
- 25.3** The Owner reserves the right to terminate this contract in the event it is found that the certification filed by the Professional 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 Professional 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 PROFESSIONAL complies with each of the provisions of these **ADDITIONAL ITEMS.**