

CONTRACT

A Contract, dated as of [LOI Date], 2021, 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 _____, 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: CONSULTANTS

A. 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).

B. 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.

C. 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 certified payroll copy, Compliance Report, and other appropriate backup. Certified payroll 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 CLASSIFICATIONS 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 certified 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 TBD 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.gsa.gov).

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:

- A. to assure payment of just claims of any persons supplying labor or materials for the Work.
- B. to protect the OWNER from loss due to defective Work not remedied.
- C. to protect the OWNER, Client, 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
- D. 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

- (i). The PROFESSIONAL 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.
- (ii). The PROFESSIONAL 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 PROFESSIONAL and Subconsultants shall maintain such insurance policy in force for the specified period beyond issuance of the Notice of Physical Completion.

- (iii). All insurance required to be procured and maintained by the PROFESSIONAL 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.
- (iv). All insurance policies required to be procured and maintained by the PROFESSIONAL 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.
- (v). All insurance policies required to be procured and maintained by the PROFESSIONAL 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.
- (vi). All insurance policies required to be procured and maintained by the PROFESSIONAL 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.
- (vii). All insurance policies required to be procured and maintained by the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL or any Subconsultant to maintain an insurance policy, the OWNER may require the PROFESSIONAL or any Subconsultant to provide proof, acceptable to the OWNER in its sole discretion, that the PROFESSIONAL or Subconsultant has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the PROFESSIONAL or Subconsultant may be liable under the claims pending or reasonably possible against the PROFESSIONAL or Subconsultant at the time the OWNER requires the proof. A failure of the PROFESSIONAL or Subconsultant to provide such proof is a failure of the PROFESSIONAL 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.
- (viii). All insurance policies required to be procured and maintained by the PROFESSIONAL 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 PROFESSIONAL's policies or any of the policies of any Subconsultant prohibit such a waiver of subrogation, the PROFESSIONAL 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.
- (ix). Each liability and protective liability insurance policy required to be procured and maintained by the PROFESSIONAL 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 PROFESSIONAL'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 PROFESSIONAL's or Subconsultant's insurance policies.

- (x). Any PROFESSIONAL Contract Documents, including but not limited to the Request for Proposal, but excluding Change Orders, may require any of the PROFESSIONAL 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).
- (xi). Notwithstanding any other provision of the Contract for PROFESSIONAL Services, the OWNER, in a Change Order or Contract Amendment, may require the PROFESSIONAL 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).
- (xii). Neither the procurement nor the maintenance of any type of insurance by the OWNER, the Client(s), the PROFESSIONAL or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the PROFESSIONAL or any Subconsultant from any of the obligations or risks accepted by the PROFESSIONAL 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.
- (xiii). All provisions of General Terms and Conditions Article X: 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 PROFESSIONAL, 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 PROFESSIONAL's and each Subconsultant's obligations to procure insurance.
- (xiv). PROFESSIONAL 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.
- (xv). PROFESSIONAL agrees and acknowledges that, because the PROFESSIONAL (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 PROFESSIONAL, 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

- (i). OWNER will not execute the Contract for PROFESSIONAL Services unless the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

- (ii). The PROFESSIONAL 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 PROFESSIONAL. All insurance submittals must be approved by the OWNER or the OWNER's designee prior to the PROFESSIONAL's commencement of work.
- (iii). Upon the OWNER's request, the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL, constitute a warranty by the PROFESSIONAL, the Subconsultant and the Subconsultant's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- (iv.) Upon request of the OWNER made any time after bids are opened, the PROFESSIONAL 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 PROFESSIONAL

- (i.) Prior to award of the Contract for PROFESSIONAL Services, the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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.
 4. 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 PROFESSIONAL's Group Self Insurance Administrator shall provide a completed form.
 5. 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 PROFESSIONAL'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 PROFESSIONAL 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 PROFESSIONAL or Subconsultant proposes the use of a policy other than the ISO form CG 00 01 12 07, the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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. PROFESSIONAL and Subconsultant shall pay OWNER any attorney fees and other

4. 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 PROFESSIONAL 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 X of this Contract for PROFESSIONAL Services.
 6. Excavation, Collapse and Underground Hazards.
 7. Independent PROFESSIONALs/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. PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL or Subconsultant or between the Construction Manager and the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 CONSULTANT 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 PROFESSIONAL'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 PROFESSIONAL's or Subconsultant's insurance policies.

- (f). PROFESSIONAL Liability insurance: Each of the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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.

- (ii). Notwithstanding any other provision of the Contract for PROFESSIONAL Services to the contrary and to the fullest extent permitted by law, PROFESSIONAL shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the OWNER, the Client(s) or the Construction Manager in any action brought by or against the OWNER, Client(s) or Construction Manager concerning insurance coverage owed to OWNER, Client(s) or Construction Manager by any insurer for which PROFESSIONAL or any Subconsultant represented that the OWNER, Client(s) and Construction Manager would be an insured or would benefit in any way if a claim was brought against OWNER, Client(s) and Construction Manager .

D. Other Insurance Provided by PROFESSIONAL

- (i). The PROFESSIONAL and each Subconsultant shall also procure and maintain as required by Subsections X.A.ii and X.C.i of this Contract for PROFESSIONAL Services, 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 PROFESSIONAL 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 PROFESSIONAL and any such Subconsultant shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.
 - b. PROFESSIONAL's 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 PROFESSIONAL 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 of this Contract for PROFESSIONAL Services.
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 PROFESSIONAL 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 PROFESSIONAL shall provide a Railroad Protective Liability insurance policy, the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL 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 of this Contract for Professional Services.
 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

- (i). 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 PROFESSIONAL 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.

- (ii). Failure of the PROFESSIONAL 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 PROFESSIONAL.
- (iii). 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 PROFESSIONAL or Subconsultant shall immediately cease work on the Project. The PROFESSIONAL or Subconsultant shall not resume work on the Project until authorized to do so by the OWNER or the OWNER's designee.
- (iv). Any delay or time lost as a result of the PROFESSIONAL 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 PROFESSIONAL may be liable to other consultants for costs incurred by reason of the PROFESSIONAL's, Subconsultant's or Subcontractor's failure to provide insurance.

F. Subcontractor Insurance Requirements

- (i). To the extent that the PROFESSIONAL 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 Articles X.A., X.B., X.C., X.D. and X.E. of this Contract for PROFESSIONAL Services, except that Subsections X.A.ii and X.C.i (f) of this Contract for PROFESSIONAL Services 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: GENERAL INDEMNITY

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

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made that allocates responsibility to the OWNER, the Client or the OWNER's related parties, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which the OWNER is responsible, and the OWNER agrees to pay the

CONSULTANT the percentage of uninsured defense costs that the CONSULTANT incurred based upon an apportionment of the OWNER's allocated responsibility.

A. **Intellectual Property Indemnity**

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

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

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

C. **Waiver of Damages**

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

D. **Interest**

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

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 – NOT APPLICABLE

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 TBD .

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 "E" ADDITIONAL ITEMS

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

ARTICLE XIX: NYS OFFICE OF THE STATE COMPTROLLER APPROVAL

In accordance with Public Authorities Law §2879-a, this Contract was determined by the NYS Office of the State Comptroller to be subject to the Comptroller's prior approval. Therefore, this Contract shall not be valid, effective, or binding upon the State until it has been approved by the State Comptroller.

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 _____
Authorized Officer

Title: _____

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**

Objective

The Dormitory Authority of the State of New York intends to provide Commissioning Services to clients in order to comply with the relevant sections of, and in accordance with (1) the project requirements set forth in the Owner's Project Requirements, and (2) DASNY Building Commissioning Guidelines, and (3) the applicable legal and regulatory requirements, including but not limited to New York State Energy Efficiency Conservation Code, Chapter 4-Commercial Energy Efficiency, Section 408-System Commissioning, the LEED (Leadership in Energy and Environmental Design) Rating System, NYS Tax Law §19, 6 NYCRR § 638.8, New York State Executive Order 22, the State Green Building Construction Act (Article 13 of the Energy Law), ASHRAE Standard 202, ASHRAE Guideline 0, and other building commissioning related documents.

Responsibilities

For the purposes of this contract, the Consultant shall provide the services of the Commissioning Authority, the Contractor shall provide the services of the Commissioning Agent (note it is expected that the Contractor shall provide an expert commissioning entity to act on their behalf as commissioning agent to assist with the Commissioning Authority/Commissioning Agent coordination) and the Designer shall provide the services of the Design Professionals as described in Section 638.8(c) of the NYS Green Building Tax Credit as amended by the Dormitory Authority State of New York, in the DASNY Building Commissioning Guidelines located at www.dasny.org. Note that DASNY does not allow the Commissioning Authority and the Commissioning Agent to be the same organization, nor does DASNY allow the Design Professional and the Commissioning Authority to be the same organization.

Capital Project Commissioning Services

The Commissioning Authority will be authorized to proceed with the specific tasks as required by the relevant sections of Section 638.7 (Indoor Air Quality) and 638.8 (Commissioning) as amended by DASNY in DASNY's Building Commissioning Guidelines, and other related services as listed herein. DASNY Building Commissioning Guidelines can be found on DASNY's website at www.dasny.org.

Note this project will include three phases of commissioning services as follows:

1. Commissioning phase 1 services-Design progress to 60% Design Development submission review.

2. Commissioning phase 2 services-60% Design Development submission (post Commissioning Authority Design Development review) to 100% Contract Documents, Bid Set, and Bid period.
3. Commissioning phase 3 services-Construction and Post-Occupancy Turn Over period.

The Commissioning Authority's services may include, but not be limited to the tasks noted below. The Commissioning Authority shall provide the following:

Design Phase (Commissioning phase 1-Design progress through 60% Design Development Commissioning review):

- Lead the Project Team and discuss roles and responsibilities related to Commissioning.
- Identify and document systems requiring Commissioning.

The Commissioning Authority shall commission, systems, equipment, and components to meet the requirements of the following: NYS Tax Law 19, 6 NYCRR Green Building Tax Credit Part 638, LEED prerequisite and enhanced commissioning credit requirements, and Article 13 of the New York State Energy Law – the Green Building Construction Act. Commission the following systems, equipment, and components as applicable to this specific project, and, include a project specific list quantifying the equipment and systems to be commissioned in project Commissioning Authority Services Proposals. They are listed below

Chillers, boilers, domestic water and service water heaters, cooling towers, HVAC pumps and domestic hot water circulating pumps, unitary and split air conditioners, furnaces, fans, heat exchangers, controls for central plant and HVAC including energy management systems or portions of building automation systems that affect energy use, ducts and associated dampers including automated opening protectives (fire and combination fire/smoke dampers), Plumbing and HVAC piping and associated valves, HVAC duct and pipe insulation, air quality monitoring systems as they relate to ventilation systems, duct system protection during construction as related to indoor air quality, renewable and alternative energy technologies, waste heat recovery, thermal storage equipment, automated lighting controls, automated day-lighting controls, and water treatment systems.

The Commissioning Authority is also requested to commission the plumbing systems beyond the water heater and the recirc. pump, such as domestic water system balancing oversight, installation inspections to confirm isolation valve locations, gauge locations and ranges, accessibility to valves, valve tags and pipe labeling, proper system disinfection, etc. The Commissioning Authority should also incorporate plumbing system operation into the Systems and Energy Manual that covers annual operation, central plant shut down, operation of summer water heaters (if applicable), etc.

The Commissioning Authority may be requested to commission other building systems and components such as water treatment systems, sewage treatment systems, electrical system main components such as generators, main switchgear, main panels, etc. as applicable, telecommunications, audio/video, security, Health Care and Laboratory specialty systems (such as medical gases, vacuum, reverse osmosis, de-ionized water, lab disposal, dental and medical equipment, etc.), building envelope and building automation systems and integration as applicable.

- Develop and provide a Design Phase Commissioning Plan. Distribute the first draft of this plan at the next applicable design progress meeting. The Design Phase Commissioning Plan should include, at a minimum, the following items:
 - The commissioning team list and contact information.
 - A commissioning overview specific to the project.
 - Identification of equipment and systems to be commissioned.
 - Roles and responsibilities of the Commissioning team members during design phase.
 - Communication channels and protocol.
 - Description of the commissioning process activities during the design phase:
 - Design phase Commissioning meetings
 - Contract document design review and documentation process, including:
 - Schematic Design Report review
 - Review and maintenance of formal Design Intent, Basis of Design, and Owner's Project Requirement documents
 - 60% Design Development Document review
 - Commissioning specifications development
 - 100% Contract Document review including documentation of completed design for systems and equipment to be commissioned, all sequences of operations, Testing, Adjusting & Balancing requirements, and commissioning specification coordination.
 - Contract document specification format and coordination for commissioning.
 - Draft commissioning process form examples.
 - General description of the commissioning process activities during construction phase, including post occupancy commissioning activities.
- Review and comment on completeness and adequacy of the *Owner's Project Requirements (OPR)*. And may be requested to assist developing the OPR. (The OPR should be included as a distinct section of the Schematic Design Report.)
- Attend and participate in design progress meetings.
- Attend and participate in two LEED Charrette Meetings.
- Review and comment on 30% Schematic Design Report, Drawings and Specifications, and attend a Schematic Design Onboard Review meeting.
- Review and comment on the Design Intent and Basis of Design (The Design Intent and Basis of Design should be included as distinct sections of the Schematic Design Report. For LEED Projects the Owner's Project Requirements should be substituted for the Design Intent).
- Attend design progress meetings between 30% Schematic Design submission and 60% Design Development submission.
- Review Design Professional's Energy Models for accuracy, and viability. Provide input to assist with maximizing energy efficiency and develop M & V strategy to be incorporated into the Contract Documents. Purpose of the M & V process should be to prove accuracy of the energy model and the energy efficient operation of the constructed facilities within the project scope.
- Review and comment on 60% Design Development submission.

- Identify potential energy efficient criteria consistent with Energy Star and/or financial incentives available from NYSERDA (www.nyserda.org/default.asp) via NYSERDA's Program Opportunity Notices, and/or LIPA (www.lipower.org), NYPA (www.nypa.gov), DOE (www.energy.gov), EPA (www.epa.gov), and/or any other incentives, such as from utility providers, that may benefit the project.
- Develop Commissioning Specifications and assist the Design Professional to adopt and coordinate the complete contract documents to include commissioning requirements. Draft Commissioning specifications should be submitted to be included in the 30% Schematic Design submission, and subsequent Commissioning specifications, edited specific to the project design development should be submitted to be included in the 60% Design Development submission. Sampling strategies utilized for tests, inspections, or observations must be clearly defined in the specifications, and pre-approved by the design consultant and owner's representative on a per project basis. No sampling strategies should be applied to Functional Performance Testing of primary systems and equipment, or their control sequences. If sampling strategies are utilized for functional performance testing of terminal equipment, then trend logging must be employed to demonstrate functional performance of all remaining terminal equipment. Note that all automated opening protectives (fire and combination fire/smoke dampers) should be commissioned with installation verification and dynamic testing to ensure proper operation. Commissioning Authority should also require in the specifications that submittals for commissioned equipment and systems should be reviewed by the Commissioning Authority concurrently with the Design Professional(s).
- For TAB specification clarification in terms of commissioning, the Commissioning Authority shall review, and oversee the TAB requirements, TAB testing, TAB reports, and backcheck 20% of the final measured field values with an independent certified TAB firm. If greater than 10% of the backchecked values fail to match (+/- 5%) the final balance report values the Contractor provided TAB firm will be required to rebalance as necessary, and the Commissioning Authority provided TAB firm will backcheck an additional 20% of systems. This process will continue until all systems are balanced to within +/- 10% of acceptable values.
- Review and comment on the Sequence of Operations. Commissioning Authority shall formalize this process with a standalone Sequence of Operations review issuance, with a review/response close-out process. Note the design expectation is to have the 30% Schematic Design submission include a plain language narrative that fully defines control systems and system control strategies including BAS integration plans. The 60% Design Development submission shall include control narratives and complete control points lists. The 100% Construction Documents submission shall include narratives, points list, and complete control diagrams on the drawings.
- Revise the Design Phase Commissioning Plan at the 60% Design Development submission stage as necessary to reflect accurate requirements.
- Document design phase activities through the 60% Design Development submission.

Design Phase (Commissioning phase 2-60% Design Development submission, post Commissioning Authority Design Development review, to 100% Contract Documents, Bid Set, and Bid period)

- Lead the Project Team coordinating commissioning roles and responsibilities clearly defined in the contract documents.
- Revise and distribute an updated Design Phase Commissioning Plan that includes accurate systems and quantified equipment lists that will require commissioning.
- Review and comment on completeness and adequacy of the Owner's Project Requirements and Basis of Design, noting if updates are required to correlate with the design development.
- Attend design progress meetings between 60% Design Development submission and 100% Construction Document submission.
- Review Design Professional's Energy Models for accuracy, and viability. Provide input to assist with maximizing energy efficiency and develop M & V strategy to be incorporated into the Contract Documents.
- Identify potential energy efficient criteria consistent with Energy Star and/or financial incentives available from NYSERDA (www.nyserda.org/default.asp) via NYSERDA's Program Opportunity Notices, and/or LIPA (www.lipower.org), NYPA (www.nypa.gov), DOE (www.energy.gov), EPA (www.epa.gov), and/or any other incentives that may benefit the project.
- Review documents and attend design review meeting at 100% Contract Document submissions as applicable, addressing commissioning issues. Document all Design Phase Commissioning meetings and distribute minutes as applicable.
- Review documents at 100% Contract Document Bid Set submission as applicable, addressing commissioning issues.
- Ensure all Commissioning Specifications and references are coordinated to clearly define commissioning requirements and responsibilities for all parties. The Design Professional shall adopt and coordinate the complete contract documents to include commissioning requirements. Draft Commissioning specifications to be included in the 60% Design Development submission, and subsequent Commissioning specifications, edited specifically to the project design development should be submitted to be included in the 100% Construction Document submission. Ensure the specifications require the Commissioning Agents (Contractors that have Commissioning responsibilities) to submit commissioning experience qualifications submittals for the Commissioning Authority's and Design Professional's review and approval.
- Review and comment on the Sequence of Operations. Commissioning Authority shall formalize this process with a standalone Sequence of Operations review issuance, with a review/response close-out process if necessary. Note the design expectation is to have the 60% Design Development submission shall include control narratives and complete control points lists. The 100% Construction Documents submission shall include narratives, points list, and complete control diagrams on the drawings.
- Revise the Design Phase Commissioning Plan at the 100% Construction Documents submission stage as necessary to reflect accurate requirements.

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- Support the bid phase as necessary to clarify the Contract Document commissioning requirements through construction.
- Document design phase activities.

Construction Phase: (Commissioning Phase 3-Construction and Post Occupancy Turn Over Period)

- Conduct Construction Phase Commissioning Team Kickoff Meeting, progress meetings, and issue commissioning meeting minutes. The Commissioning Authority should present and distribute the Construction Phase Commissioning Plan and review responsibilities of the Commissioning team members during the construction phase. Cover all topics noted in the Construction Phase Commissioning Kick-off Meeting Agenda Outline at the construction phase kickoff meeting.
- Review and approve Commissioning Agent(s) commissioning qualifications submittals.
- Review submittals and shop drawings for equipment & systems requiring Commissioning concurrently with the Design Professional's reviews, and request copy of coordination drawings when available for cross reference when reviewing.
- Review and document the Commissioning Agent's Indoor Air Quality Management Plan During Construction and prepare a Construction Indoor Air Quality Management Report, as well as oversee the Indoor Air Quality Management process during construction as outlined in GBTC, 6NYCRR Part 638.7 (d) (2). Note that this activity is not intended to replace the contractor's responsibilities of documenting indoor environmental quality requirements as related to LEED obligations.
- Upon submittals approval, develop or pre-approve *Pre-functional Testing Procedures*, including static, start-up, and checkout procedures and checklists. Upon approval of all control submittals the Commissioning Authority shall request and coordinate with controls installation milestones such as point to point checks, functional performance prior to the Testing, Adjusting & Balancing plan, confirmation of graphics and integration completion, and final functional performance testing including all deficiency resolution.
- Upon completion of pre-functional testing procedures and checklists, revise Construction Phase Commissioning Plan and issue to Commissioning Agent(s).
- Review and comment on the completeness and adequacy of the Testing, Adjusting & Balancing Plan.
- The Commissioning Authority's services include provision of Testing, Adjusting & Balancing oversight and support services (Testing, Adjusting & Balancing firm must be certified by NEBB, TABB, or AABC). For the construction phase the Commissioning Authority shall review, and oversee the Testing, Adjusting & Balancing requirements, Testing, Adjusting & Balancing Plan, Testing, Adjusting & Balancing testing, Testing, Adjusting & Balancing reports, and backcheck 20% of the final measured field values with an independent certified Testing, Adjusting & Balancing firm. If greater than 10% of the backchecked values fail to match (+/- 5%) the final balance report values the Contractor provided from the Testing, Adjusting & Balancing firm will

- be required to rebalance as necessary, and the Commissioning Authority provided Testing, Adjusting & Balancing firm will backcheck an additional 20% of systems. This process will continue until all systems are balanced to within +/-10% of acceptable design values.

Conduct periodic site inspections and distribute inspection findings reports. Typically, site Commissioning inspections should occur at below grade utilities rough-in, building MEP rough-in, primary equipment delivery, static, start-up, and pre-functional testing phases, check-out prior to functional performance testing, functional performance testing, final deficiency close out, and post occupancy review period as applicable.

- Verify construction and installation of building systems, equipment and components (Pre-Functional Inspection Verifications), and document Pre-Functional Testing including start-up and checkout is completed. These services may include additional 3rd party oversight of controls, BMS, and/or BAS work as determined on a per project basis.
- Receive other Testing Agent's schedules for special inspections on systems or equipment to be commissioned and assess potential for performing commissioning activities congruently with these special inspections. Also, review and document Special Inspection Reports that pertain to commissioned systems.
- The Commissioning Authority shall witness, document, and confirm or approve all of, and not be limited to the following:
 - Below and above grade rough in piping system static installations
 - HVAC and Domestic pipe flushing and testing, and associated procedures
 - Duct cleaning and testing, and associated procedures
 - Lab specific, or lab specific equipment inspection, pre-test, and testing requirements
 - As required piping and ductwork insulation
 - Testing and calibration of the controls system before Testing, Adjusting & Balancing
 - Testing, Adjusting & Balancing procedures and reports, and verify a minimum of 20% of the Testing, Adjusting & Balancing field measured data by performing their own independent measurements.
- Retrieve *Certificate of Readiness* from the Commissioning Agent (Contractor) prior to *Functional Performance Testing* stating that start-up and checkout have been successfully completed and that all equipment, systems, and controls are complete and ready for functional performance testing.
- Develop *Functional Performance Testing Procedures* and checklists.
- Maintain a master log of deficiencies and resolutions. And formalize the deficiency resolution and closeout process with a "Deficiency Resolution Close Out Form" stating that all deficiencies have been satisfactorily addressed and the Owner's O&M representatives accept the current state of all commissioned systems.
- Witness, approve, document and verify *Functional Performance Testing* were performed and completed.
- The Commissioning Authority shall, at a minimum, review, witness portions of, and document the following regarding IAQ Testing (The intent is to meet applicable IAQ testing requirements

- of both GBTC Section 638 and current LEED standards.); And may be required to perform the IAQ testing itself (determined on a per project basis):
 - IAQ Testing Protocol prior to IAQ testing
 - Confirm prerequisites such as construction completion and occupancy, building flush out, and as designed HVAC operation, prior to IAQ testing
 - IAQ Testing Reports and confirm acceptable results.
- Review the Operation and Maintenance Manual(s) and comment on completeness and adequacy in accordance with the design intent and contract documents. Submit Operation & Maintenance review comments to the Design Professional for their review and direction to the Commissioning Agent.
- Develop Systems & Energy Management Manuals.
- Review and comment on completeness and adequacy of the Operation & Maintenance training syllabus for commissioned systems.
- Oversee the training of the owner’s Operation & Maintenance personnel, and document written verification that training of operations and maintenance personnel was conducted for all commissioned features and systems.
 - Include a formal discussion of the last four bullets in a commissioning meeting. Include the responsible contractor(s), at least two owner/building operator and management titles, and DASNY PM at this meeting. The Design Professional is not necessary assuming they have approved/signed off the O&Ms, Sys & En Manuals, and O&M Training Syllabi. Document the owner operator and management staff, on behalf of the owner, understand, accept, and are satisfied with the current state of the O&Ms, Sys & En manuals, and training, and are capable of taking over operation and maintenance of all commissioned systems.
- Retrieve “System Certification” (as required and defined in current NYS Energy Code Section C104.2.6, and NYC Energy Code) from the applicable design professional and document in the final commissioning report.
- Develop and provide a *Final Commissioning Report*.
- Provide *Statement of Certification of Work* by the Commissioning Authority confirming that all Commissioning Authority scope items have been completed, documented, and are reflected in the Commissioning Report.
- Post-Occupancy Phase periodic site visits (monthly or weekly site visits, commencing upon occupancy, for the remaining of the contractor warrantee period, depending on project specific needs), to confirm as designed functional performance, review of adequate operations and maintenance processes, troubleshooting assistance, measurement and verification, etc., as necessary.
- Verify, document and conduct off-season deferred testing.
- Verify, document and conduct *Post Occupancy Review*

- Post Occupancy review shall take place within the one-year project warranty period, preferably after project deficiency close out, after deferred off-season testing, and after the Commissioning Authority's Statement of Certification of Work with exception to the post occupancy work, and roughly between the six-to-ten-month mark in the warranty period. The Post Occupancy Review shall include a pre-review and post review meeting that includes review and discussion of:
 - Final Commissioning Report
 - Systems & Energy Manual and its use
 - O & M Manuals and their use
 - Sequence of Operations
 - Status of O & M activity and documentation of organizational O&M processes in use (ie. PM, CMMS, etc.)
 - Condition and usefulness of "As-built" documents.
 - Systems and equipment to be reviewed, exercised, and confirmed to be in compliance with functional performance in accordance with the design intent and contract documents (S&E, O&M, SOO, etc.)
- Provide Post Occupancy Review Report documenting all post occupancy review activities including any new deficiencies, resolutions, and recommendations.
- Enhanced commissioning turn-over phase; Provide monitoring-based commissioning (MBCx) data analytics tools to ensure consistent optimal efficiency, and energy management, for a period not less than three consecutive years, commencing upon the end of the one-year contractor warranty period. During this period monthly MBCx Reports shall be submitted to the owner, DASNY, and the Energy Management Consultant (as applicable) for the site.

The Commissioning Authority's services **may** include, but not be limited to services related to sustainability (including the USGBC LEED rating system), existing building commissioning, energy auditing, and O & M support. The Commissioning Authority may:

LEED:

- Assist with development of LEED Checklists in design phase;
- Provide LEED assessments as applicable;
- Coordinate LEED activities with Owners, Design Team, and Contractors.
- Manage the integrated LEED process as directed.

O&M Support Services:

- Provision of Operation & Maintenance support services, including but not limited to: Assessment of organizational structure; O&M process evaluations; Computerized Maintenance Management System evaluations and ongoing support; Review of staff responsibilities and technical expertise; Development of training manuals; Development of Equipment Standard Operating Policies and Procedures; Necessary O&M equipment asset inventory assessment; Service contract assessment and management support, Development of, or assessment/management support for preventative maintenance programs, and transitional strategies and recommendations to ensure optimized performance; Equipment Use Permitting assistance; Inspection documentation; and remedial action oversight; Development and delivery of formal O&M training programs to enhance staff knowledge base; Conduct facility condition assessments.

- Provision for transitional services for operation and maintenance and/or temporary operations services for on-site primary systems management for central heating, chilling, and mechanical/power plants, and related distribution systems including operations management, on-going analysis of energy consuming systems to identify opportunities for energy, cost, and energy-cost reductions by optimizing performance.

FINAL COMMISSIONING REPORT:

The *Commissioning Authority* shall be required to produce a final Commissioning Report for each commissioning project containing documentation and certification of all services specified. Three (3) copies of a draft report shall be sent for Owner's review and comments, and three (3) copies of a final report that addresses these comments shall also be delivered. Hard copy Final Report binders shall be provided with electronic format Final Report compact discs as well.

The *Commissioning Authority* shall incorporate the Owner's comments within 15 working days.

The *Commissioning Authority* shall produce and or assemble the following items into a building profile and final Commissioning Report that will enable a comprehensive approach to maintenance and operations. The final Commissioning Report shall contain all requirements as detailed in the Green Building Tax Credit Part 638.8 (k), and include but not be limited to the following:

- Owner's Project Requirements, Design Intent, and Basis Of Design
- Commissioning Plan
- All commissioning design, construction, and post occupancy reviews, meeting minutes, pre-functional and functional testing verification documentation, deficiency lists, and inspection reports
- IAQ Management Plan During Construction, Construction IAQ Management Report, IAQ Testing Protocol, and IAQ Testing Reports confirming acceptable results
- Operations & Maintenance Manuals
- Operations & Maintenance Training Syllabi and training documentation
- Systems and Energy Management Manual
- Statement of Certification of Commissioning Authority

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 certified payroll copy, Compliance Report, and other appropriate backup. Certified payroll 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 certified 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, Section B.:

Technical Classifications

**Direct Salary
Rate**

APPENDIX "D"

ADDITIONAL INSUREDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX "E"
ADDITIONAL ITEMS

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1. **LABOR LAW PROVISIONS**

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

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

2. NONDISCRIMINATION

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

- A. The CONSULTANT will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.
- B. If directed to do so by the Commissioner of Human Rights, the CONSULTANT will send to each labor union or representative of workers with which the CONSULTANT has or is bound by a collective bargaining or other agreement

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

- C. If directed to do so by the Commissioner of Human Rights, the CONSULTANT will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- D. The CONSULTANT will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
- E. The CONSULTANT will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the CONSULTANT'S books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Commissioner of Labor of the State of New York for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.
- F. This Contract may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the CONSULTANT has not complied with these nondiscrimination clauses, and the CONSULTANT may be declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the CONSULTANT satisfies the State Commissioner of Human Rights that the CONSULTANT has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the CONSULTANT, and an opportunity has been afforded the CONSULTANT to be heard publicly in accordance with the Executive Law.

Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

- G. The CONSULTANT will include the provisions of clauses A. through F. in every subcontract or purchase order in such a manner that said provisions will be binding upon each Sub-consultant or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing said provisions of said subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a Sub-consultant or vendor as a result of said direction by the State Commissioner of Human Rights or the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

5. CONTRACT DEEMED EXECUTORY

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

6. OWNERSHIP OF DOCUMENTS

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

7. TERMINATION OR SUSPENSION

A. Termination for Cause

If the CONSULTANT defaults by failing to substantially perform, in accordance with the terms of this Contract for Professional Services, as determined by the OWNER, the OWNER may give written notice to the CONSULTANT (i) terminating this Contract for Professional Services effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the CONSULTANT initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the

CONSULTANT fails to initiate cure upon the request of the OWNER and continue such cure until complete, the OWNER may give notice to the CONSULTANT of immediate termination. If the OWNER terminates this Contract for Professional Services pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the CONSULTANT was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph B of this Article.

B. Termination for Convenience or Suspension of Project

The OWNER may at any time give written notice to the CONSULTANT terminating this Contract for Professional Services or suspending the Project, in whole or in part, for the OWNER'S convenience and without cause. If the OWNER terminates this Contract for Professional Services or suspends the Project, the CONSULTANT shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

C. Payment in Case of Termination or Suspension of Project

1. If this Contract for Professional Services is terminated by the OWNER pursuant to Paragraph 7A above, no further payment shall be made to the CONSULTANT until completion of the Project. At such time, the CONSULTANT'S compensation shall, at the OWNER'S option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the CONSULTANT'S compensation shall be reduced by all costs and damages incurred by the Owner as a result of the default of the CONSULTANT.

2. If this Contract For Professional Services is (i) terminated by the OWNER pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by the OWNER pursuant to Paragraph 7B above, the CONSULTANT'S compensation shall be calculated on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* up to the effective termination or suspension date and reasonable costs associated with termination or suspension. In no event shall the CONSULTANT be entitled to compensation in excess of the Professional Contract Price.

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

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

8. SUSPENSION OR ALTERATION

A. The OWNER may order the CONSULTANT in writing to suspend, delay, or interrupt performance of all or any part or the Work for a reasonable period of time as the OWNER may determine. The order shall contain the reason or reasons for issuance which may include, but shall not be limited to, the following: latent field conditions, substantial program revisions, acquisition of

rights-of-way or real property, financial crisis, labor disputes, civil unrest, or Acts of God.

- B. Upon receipt of a suspension order, the CONSULTANT shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.
- C. The CONSULTANT specifically agrees that such suspension, interruption, or delay of the performance of the Work pursuant to this Item shall not increase the cost of performance of the Work of this Contract.
- D. Time of Completion of the Work may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption, or delay, such determination to be set forth in writing.

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

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

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

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

11. GOVERNMENT PROVISIONS

The CONSULTANT shall comply with any applicable provisions or Acts of Congress, rules, regulations, and requirements of the Government of the United State of America. If there is a grant of money or loan of money by the Government of the United States of America for the Project, then the CONSULTANT shall furnish any information and provide any assistance which the OWNER deemed necessary for the preparation of any certificates, reports, or materials required as a result of obtaining said grant or loan.

12. COOPERATION

The CONSULTANT shall render any assistance which the OWNER may require with respect to any claim or action in any way relating to the CONSULTANT'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 CONSULTANT for late payment shall be governed by Section 2880 of the Public Authorities Law, to the extent required by law.

14. DEATH OF THE CONSULTANT

If the CONSULTANT is an individual and that CONSULTANT shall die prior to the said completed performance of this Contract, then the payment to the estate of said CONSULTANT, pursuant to this Contract, shall be made as if the Project or any part thereof had been suspended or altered on the date of the death of the CONSULTANT. If the CONSULTANT is a partnership and a partner shall die prior to the completed performance of this Contract, the OWNER, in the OWNER's discretion, may deem the Project or any part thereof, suspended or altered on the date of said death or any date thereafter which the OWNER selects, and the payment to the estate of the deceased CONSULTANT or the partnership, pursuant to this Contract, shall be made as if the Project or any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by the OWNER. The OWNER shall have the right to the immediate possession of all files of the CONSULTANT relating to the Project, all plans and specifications in regard to the Project, and shall have a right to retain the services of another CONSULTANT to complete the Project. If the CONSULTANT is a professional or other corporation, then this paragraph shall not be applicable.

15. DASNY-CONSULTANT RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

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

17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE

- A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.
- B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the CONSULTANT shall, within ten days following either

oral or written notice that it must comply, submit evidence of a duly executed NYS Vendor Responsibility Questionnaire (VRQ) to the OWNER.

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

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

18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, Consultant, attorney, engineer, inspector or CONSULTANT of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the *Public Officers Law* expressly prohibits the CONSULTANT, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee’s official action.

In addition to the prohibition of Section 73 (5) of the Public Officers Law, DASNY has a “zero tolerance” policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the 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 CONSULTANT or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.

- C. To promote a working relationship with the Owner based on ethical business practices, the CONSULTANT is expected to:
 - 1) furnish all goods, materials and services to the Owner as contractually required and specified,
 - 2) submit complete and accurate reports to the Owner and its agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from the Owner or its agents that provides an unfair advantage over a competitor,

- 1) not engage in any activity or course of conduct that restricts open and fair competition on Owner-related projects and transactions,
 - 2) 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
 - 3) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the CONSULTANT to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the CONSULTANT may employ relatives of Owner employees, the Owner must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict-of-interest situation does not arise. The Owner reserves the right to request that the CONSULTANT modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The CONSULTANT may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of *two years* following their separation from service with the Owner. In addition, former employees of the Owner are subject to a “*lifetime bar*” from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the Owner.
- G. The CONSULTANT agrees to notify the Owner’s Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Owner that is inconsistent with the contents of this Section.
- H. Any violation of these provisions shall justify termination of this Contract and may result in Owner’s rejection of the CONSULTANT’s bids or proposals for future contracts.

19. COOPERATION WITH INVESTIGATIONS

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

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

provided in a computer readable format, where available. At the request of the OPI or the Representative, the

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

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

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

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

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

20. FALSE STATEMENTS/INFORMATION

A. False statements, information or data submitted on or with applications for payment may result in one or more of the following actions:

- 1) Termination of the Contract
- 2) Disapproval of future contracts and sub-contracts
- 3) Withholding of final payment on the Contract
- 4) Civil and/or criminal prosecution

B. These provisions are solely for the benefit of 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.

21. INVALID PROVISIONS

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

22. **CONFLICTING TERMS**

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

23. **2005 PROCUREMENT LOBBYING LAW**

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

24. **NONCOMPLIANCE**

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