

Date

Project #1234569999

CONTRACT NO.: \_\_\_\_\_

Project Description

**CONTRACT**

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

**WHEREAS**, the OWNER will be engaged in elevator inspection and consulting services for various facilities throughout New York State, for which the PROFESSIONAL may be called upon to provide Services defined in a unilateral amendment identified as a Work Authorization, which shall hereinafter be referred to as the Project; and

**WHEREAS**, the OWNER has selected the PROFESSIONAL to provide **Elevator Inspection and Consulting Services** to be specifically identified within each Work Authorization; and

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

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

**ARTICLE I: TERM OF CONTRACT**

The Term of this Term Contract for Professional Services shall be four (4) years, starting on \_\_\_\_ and ending on \_\_\_\_\_. The term shall be automatically extended an additional two (2) years on the anniversary of the term, provided neither party has given written notice of non-renewal to the other thirty (30) days prior to the annual extension pursuant to any provision herein.

The OWNER may, in its sole discretion, extend the Term of this Term Contract for Professional services and issue Work Authorizations. The PROFESSIONAL shall continue to render services for each Work Authorization it is assigned within the term of this Term Contract for Professional Services and any such extension(s) until the completion of said Work Authorization(s) unless the OWNER gives written notice to the contrary.

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

**ARTICLE II: ADDITIONAL SERVICES**

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

**ARTICLE III: EXTRA WORK**

If the PROFESSIONAL believes that any work it has been directed to perform is beyond the scope of this Contract and constitutes Extra Work, it shall promptly so notify the OWNER in writing. The OWNER shall determine whether or not the work is in fact beyond the scope of this Contract and is considered Extra Work. If the OWNER determines that the work is Extra Work, this Contract shall be modified to equitably reflect the cost of said Extra Work. Payment shall be made in accordance with Article VI.C.

#### **ARTICLE IV – M/WBE & SDVOB CONTRACT GOALS**

This Term Contract for Professional Services does not include New York State certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) goals. Although no M/WBE and SDVOB goals have been established for this Contract, the PROFESSIONAL shall use good faith efforts to provide for meaningful participation by M/WBE and SDVOB firms in providing the scope of services where feasible.

#### **ARTICLE V: CONSULTANTS**

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

#### **ARTICLE VI: PROVISION FOR PAYMENT**

##### **Maximum Amount Payable**

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

Authorization(s) issued under this Contract shall serve as a formal acknowledgment of any change to this Contract and shall be made a part hereof.

A. Basis for Payment

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

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

Payment to the PROFESSIONAL shall only be rendered electronically, unless payment by paper check is authorized in writing by the OWNER. The PROFESSIONAL further acknowledges and agrees that the OWNER may withhold payments, if the PROFESSIONAL has not complied with the OWNER's requirements relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the OWNER.

The PROFESSIONAL is required to submit payment requests to the OWNER, on behalf of Subconsultants, within thirty (30) days of receiving approvable Subconsultant invoices.

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

B. Reimbursables

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

C. Additional Services and Extra Work

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

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

Actual Cost shall include the following specific items:

- a. Principals at the fixed rate listed in Appendix "C", **APPROVED CLASSIFICATIONS AND RATES**.
- b. Direct Salary of technical employees, other than Principals, times a multiplier approved by the OWNER. Multiplier must be supportable by appropriate audit.

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

Technical Employees, other than Principals, shall mean employees trained in areas of technical competence, such as engineer, field examiner, draftsman and related specialties, but does not include clerical, typing, or stenographic assistance. A Schedule of pay rates for technical employees and their appropriate titles is listed in Appendix "C", entitled **APPROVED CLASSIFICATIONS AND RATES**, which is attached to and made a part hereof.

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

**ARTICLE VII: REIMBURSABLE EXPENSES**

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

- A. transportation and living expenses in connection with out-of-town travel when authorized in advance by the OWNER, and when travel is in excess of fifty (50) miles one way from the PROFESSIONAL'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.

| <u>Meals</u>          | <u>NYC Rate*</u> | <u>Upstate Rate</u> | <u>Departure**</u> |          | <u>Arrival**</u> |         |
|-----------------------|------------------|---------------------|--------------------|----------|------------------|---------|
| Breakfast             | \$6.00           | \$5.00              | Before             | 7:00 AM  | After            | 8:00 AM |
| Lunch                 | \$10.00          | \$7.00              | Before             | 11:30 AM | After            | 2:00 PM |
| Dinner                | \$43.00          | \$31.00             | Before             | 6:00 PM  | After            | 7:00 PM |
| 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.

\*\* 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](http://www.gsa.gov)).

- B. fees paid to authorities having jurisdiction over the Project.
- C. reproductions, postage, and handling of drawings, specifications, and other documents for the interim submissions (for the OWNER's review and approval and at the completion of all Phases of the Project) when approved by the OWNER and the PROFESSIONAL engages the services of a printing firm.

### **ARTICLE VIII: WITHHOLDING OF PAYMENTS**

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

- A. to assure payment of just claims of any persons supplying labor or materials for the Work;
- B. to protect the OWNER from loss due to defective Work not remedied;
- C. to protect the OWNER, Client, Construction Manager, if applicable, or other such entities as identified by the OWNER as Additional Insureds from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of others caused by the act or neglect of the PROFESSIONAL or Subconsultant. Client is herein defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations or fiduciaries; or
- D. to assure payment of fines and penalties which may be imposed on the PROFESSIONAL pursuant to the provisions of this Contract.

### **ARTICLE IX: FINAL PAYMENT AND RELEASE**

Final payment shall be made to the PROFESSIONAL upon satisfactory completion and acceptance by the OWNER of all services required by the PROFESSIONAL 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 PROFESSIONAL of final payment hereunder shall operate as, and shall be, a release to the OWNER from all claims and liability to the PROFESSIONAL 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 PROFESSIONAL from any obligations under this Contract.

### **ARTICLE X: OWNER'S PROCEDURE**

The PROFESSIONAL agrees to comply with all procedural requirements of the OWNER reasonably inferable from the Scope of Services and Scope of Work. In addition, during any Design Work of this Contract, the PROFESSIONAL shall comply with all procedural requirements of the Client and be guided by the requirements of the OWNER's Design Professional's Guide and the OWNER's Design Submission Requirements. In addition, the PROFESSIONAL shall follow all applicable construction standards and report requirements of the Joint Commission on the accreditation of Health Care Organizations and other accrediting agencies/organizations as related to the project.

### **ARTICLE XI: INSURANCE**

- A. General Provisions
  1. 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.
  2. The PROFESSIONAL and Subconsultants shall maintain in force all insurance required to be procured by them under this Term Contract for Professional Services until issuance of the Notice of Physical Completion by the OWNER except where this Term 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.
  3. All insurance required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term Contract for Professional Services shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company or meet

such other requirements as are acceptable to the OWNER in its sole and exclusive discretion.

4. All insurance policies required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term Contract for Professional Services shall include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to the OWNER except for non-payment in which case notice to the OWNER shall be provided as required by law.
5. All insurance policies required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term Contract for Professional Services shall include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the OWNER.
6. All insurance policies required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term Contract for Professional Services shall be written on an occurrence basis except where this Term Contract for Professional Services explicitly allows otherwise.
7. All insurance policies required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term 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 Term 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 Term Contract for Professional Services or to provide the OWNER with evidence of valid and in-force insurance coverage required by the Term Contract for Professional Services.
8. All insurance policies required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term 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.
9. Each liability and protective liability insurance policy required to be procured and maintained by the PROFESSIONAL and Subconsultants under this Term 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.

10. 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).
11. Notwithstanding any other provision of the Term 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 Term Contract for Professional Services necessary to secure the interests of the OWNER, Client(s), or Construction Manager (if applicable).
12. Neither the procurement nor the maintenance of any type of insurance by the OWNER, the Client(s), the 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.
13. All provisions of Article XI: Insurance are to the fullest extent permitted by law. One purpose of this Term 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.
14. PROFESSIONAL is responsible for ensuring that each Subconsultant obtains and maintains in the required amount each type of insurance policy required by this Term Contract for Professional Services and that such insurance policy provides the OWNER, Client(s) and Construction Manager with the coverage required by this Term Contract for Professional Services.
15. 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 Term 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**

1. OWNER will not execute the Term 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 Term Contract for Professional Services. Upon the OWNER's request, the PROFESSIONAL shall provide a copy of each insurance policy required by the Term 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.

2. 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), Construction Manager (if applicable), and Additional Insureds, 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.
3. 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 Term 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 Term 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.
4. 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), Construction Manager (if applicable), and Additional Insureds, 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

1. Prior to award of the Term 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 Term Contract for Professional Services all of the insurance required under this Term 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 Term Contract for Professional Services all of the insurance required under this Term Contract for Professional Services. The insurance that the PROFESSIONAL and each Subconsultant shall procure and maintain under this Term Contract for Professional Services includes, but is not limited to, the following:
  - a. Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (Acord certificates are not acceptable):



1. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
  2. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
  3. GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the PROFESSIONAL's Group Self Insurance Administrator shall provide a completed form.
  4. SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the 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 Term 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, the Construction Manager, if applicable, and any other entities as required by Appendix "D" Additional Insureds of this Term Contract for Professional Services 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 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, Construction Manager (if applicable), and any other entities as required by Appendix "D" of this Term Contract for Professional Services shall apply during the Products/Completed Operations phase as well as during the course of performance of the work of the Term Contract for Professional Services.
5. The policy provisions required by Article XI of this Term Contract for Professional Services.
6. Excavation, Collapse and Underground Hazards.
7. Independent Consultant's/Subconsultants.
8. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Term 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 Term 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), Construction Manager (if applicable), or Additional

- Insureds 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), Construction Manager (if applicable), or the Additional Insureds 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), Construction Manager (if applicable), and Additional Insureds.
  22. OWNER, Client(s), Construction Manager (if applicable), and Additional Insureds 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 Term 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 Term Contract for Professional Services involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.
- e. Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding sections, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding sections. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding sections. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the OWNER or Client(s) or Construction Manager or any other additional insured. Any other insurance maintained by the OWNER, the Client(s), the Construction Manager, or any other additional insured shall be in excess of and shall not contribute with the 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 Term 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 Term 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 Term 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.

2. Notwithstanding any other provision of the Term 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

1. The PROFESSIONAL and each Subconsultant shall also procure and maintain as required by Subsections XI.A.ii and XI.C.i of this Term 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 Term 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 Term 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), the Construction Manager (if applicable) and other entities specified in Appendix "D".
    2. The policy provisions required by Article XI of this Term 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 Term 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 Term 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 identified in Appendix "D" of this Term Contract for Professional Services 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 Term 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 Term Contract for Professional Services with a minimum limit of \$2,000,000. The OWNER, the Client(s), the Construction Manager (if applicable) and other entities specified in Appendix "D" shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:
    1. The policy provisions required by Article XI of this Term 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.
- E. Endorsement specifically naming as additional insureds: Dormitory Authority, the Construction Manager (if applicable) and other entities specified in Appendix “D”. Stop Work Order – Insurance
1. All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The 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.
  2. Failure of the PROFESSIONAL or any Subconsultant to maintain the insurance required by the Term 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 Term Contract for Professional Services shall result in a Stop Work Order pursuant to Appendix “E” Section 7 – Termination or Suspension and/or withholding of payment to the PROFESSIONAL.
  3. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the 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.
  4. Any delay or time lost as a result of the PROFESSIONAL or Subconsultant not having proper insurance required by this Term 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 Term 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
1. 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 XI.A., XI.B., XI.C., XI.D. and XI.E. of this Term Contract for Professional Services, except that Subsections XI.A.ii and XI.C.i (f) of this Term 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 XII: GENERAL INDEMNITY**

To the fullest extent permitted by law, the PROFESSIONAL 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 PROFESSIONAL; or (ii) of the PROFESSIONAL’s consultants, subcontractors or suppliers; or (iii) of the agents, employees or servants of the PROFESSIONAL or its consultants, subcontractors or suppliers. The PROFESSIONAL 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 PROFESSIONAL the percentage of uninsured defense costs that the PROFESSIONAL incurred based upon an apportionment of the OWNER's allocated responsibility.

A. Intellectual Property Indemnity

To the fullest extent permitted by law, the PROFESSIONAL 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 PROFESSIONAL has reason to believe the use of a required design, process or product is an infringement of a patent, the PROFESSIONAL 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 PROFESSIONAL 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 PROFESSIONAL that remain unpaid thirty (30) calendar days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Article VI above.

**ARTICLE XIII: OWNER'S RIGHT TO AUDIT AND INSPECT RECORDS**

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

**ARTICLE XIV: ASSIGNMENT**

The PROFESSIONAL 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 PROFESSIONAL.

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

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

**ARTICLE XVI: COUNTERPARTS**

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

DRAFT



**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/Signatory

Title: Authorized Officer

Date: \_\_\_\_\_

**Firm Name**

**Firm Address**

**Firm Address**

By \_\_\_\_\_

Authorized Officer/Signatory

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NEW YORK STATE ACKNOWLEDGEMENT - DASNY**

State of New York )

) SS:

County of \_\_\_\_\_)

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

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

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

**Signature of Notary**

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

**NEW YORK STATE ACKNOWLEDGEMENT – PROFESSIONAL**

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

#### ARTICLE I: INTRODUCTION

The PROFESSIONAL shall provide, but not be limited to, evaluation/inspection services and third-party test witnessing for new and existing elevators, escalators, moving walks, dumbwaiters, platform lifts, stage lifts and wheelchair lifts for the OWNER’s clients at various sites throughout the State of New York (including New York City). Any other code required conveying equipment inspections should be applied as necessary. Following the field evaluation, inspection and testing (Category (CAT) test witnessing in the State of New York) of such units, the PROFESSIONAL shall be required to submit to the OWNER a report which sets forth any code violation and/or recommended remedial action. The PROFESSIONAL and inspectors shall meet all licensing requirements of the NYS Department of Labor for services to be provided under this Contract. Additionally, the PROFESSIONAL shall provide inspectors for acceptance and periodic inspections and tests that meet the qualification requirements of the ASME (The American Society of Mechanical Engineers) Standard for the Qualification of Elevator Inspectors (QEI), hold QEI-1 Certification and, for New York City projects, meet all licensing requirements of the New York City Department of Buildings (DOB). Inspectors and inspection supervisors shall be certified by an independent, accredited, certifying organization.

The purpose of such evaluations and associated recommendations are to ensure the units inspected are maintained, operating, (in the case of new units) installed in a manner which allows for safe reliable utilization and meets all applicable codes (from the date of installation and any retroactive codes being enforced).

In addition, if deemed appropriate by the OWNER, the PROFESSIONAL shall provide consultation services such as providing recommendations to the design professional for the development of scopes of work or contract documents for projects involving vertical transportation work ranging from incidental minor repair to complete modernization/replacement. Consultation services may be specific to elevator rehabilitation and/or new installation.

#### ARTICLE II: CODES AND STANDARDS

The PROFESSIONAL recommendations shall be based upon the applicable edition of ASME A17.1, American National Standard Safety Code for elevators, escalators, moving walks and dumbwaiters, ASME A18.1, American National Standard Safety Code for platform lifts, and Chapter 30 of the Building Code of New York State or Chapter 30 of the Building Code of the City of New York (as modified by Appendix K), as applicable to the project.

The PROFESSIONAL shall also supply recommendations concerning the present condition of existing units which are not included in the above referenced codes but constitute accepted operational and/or maintenance procedures.

#### ARTICLE III: OBJECTIVES – SCOPE OF WORK

##### A. Condition/Maintenance Survey Inspections

The PROFESSIONAL shall be responsible to inspect existing units as requested by the OWNER for the duration of the contract. Following each inspection, it shall be required that all findings and recommendations be presented to the OWNER in a report form. The PROFESSIONAL shall be provided, by the OWNER and/or Client, a copy of existing reports and test results covering the units (upon request, if available) for information and incorporation into future reports.

##### B. Acceptance Inspections/Tests

At new or altered installations, prior to the OWNER’s acceptance of work performed by an erector, the PROFESSIONAL shall be required to inspect and submit a report to the OWNER concerning the condition of new or altered units in accordance with ASME A17.1 Section 8.10 or ASME A18.1 Section 10.4, as applicable, including any code violations. Upon request, the PROFESSIONAL shall return to the site to provide re-inspection to close out code violations and issue revised reports. The PROFESSIONAL shall have access to any available existing project specifications and/or reports upon request.

C. Periodic Inspections/Tests

When instructed by the OWNER, the PROFESSIONAL shall be required to perform periodic inspections and third-party test witnessing conducted by the facility contractor in accordance with ASME A17.1 Section 8.11 or ASME A18.1 Section 10.3. The associated forms generated by this work will serve to document test procedures utilized, results of tests, comments concerning the adequacy of methods utilized and any pertinent recommendations. In New York City, the PROFESSIONAL shall be required to be the third -party test witness for CAT 1 and 5 inspections/tests performed by the facility's elevator maintenance contractor in accordance with NYC 1 RCNY§101-10. Forms shall be provided to the authority having jurisdiction and submitted to OWNER's designated parties. Periodic Inspection deficiencies noted must be filed in DOB Now. PROFESSIONAL shall inform the OWNER of any actions required to complete the filing process.

D. Consulting Services

If deemed appropriate by the OWNER, the PROFESSIONAL shall be required to visit the site and submit a report to the OWNER concerning specific situations which may occur as they relate to elevators, escalators, moving walks, dumbwaiters, platform lifts, stage lifts and wheelchair lifts, etc. The PROFESSIONAL may be asked to provide documentation and/or correspondence or attend meeting(s) related to filings for state and/or local authorities having jurisdiction. The PROFESSIONAL may also be requested to provide other consulting services including but not limited to cost estimating/recommendations for repair and/or modernization/replacement, attendance at project meetings, and peer review services.

E. Expert Testimony and/or Claims Inspections

If deemed appropriate by the OWNER, the PROFESSIONAL shall make its personnel available to perform all work associated with the preparation of documents, performance of inspection and/or the presentation of testimony as it relates to any litigation proceeding or negotiations.

**ARTICLE IV: EXTENT OF EVALUATIONS, INSPECTIONS AND THIRD-PARTY TEST WITNESSING**

The intent of field evaluations, inspections and tests is to observe all areas of the unit(s) under consideration which are associated with new or altered installation, safe utilization and maintenance of such equipment including, but not limited to, equipment and associated appurtenances:

A. Condition/Maintenance Survey Evaluations

1. Elevators and Dumbwaiters (A17.1)
  - a. Cab Interiors/Exteriors
  - b. Lobby Areas
  - c. Hoistways
  - d. Pit-Areas
  - e. Machine Rooms/Spaces
  - f. Control Rooms/Spaces
2. Escalators and Moving Walks (A17.1)
  - a. Machinery Spaces
  - b. Lower Truss Pit-Areas
  - c. Landings
  - d. Limit Switch Locations
  - e. Treads/Skirt Plates
3. Platform Lifts and Stage Lifts (A18.1)
  - a. Inside/Outside Platform
  - b. Machine Space
  - c. Inside Runway
  - d. Outside Runway

4. Wheelchair Lifts (A18.1)
  - a. Inside/Outside Platform
  - b. Inside Runway
  - c. Outside Runway
  - d. Drive Machine
5. Material Lifts (A17.1)
  - a. Inside/Outside Platform
  - b. Hoistways
  - c. Pit-Areas
  - d. Machinery Space

**B. Periodic Inspections / Third Party Test Witnessing**

In general, periodic inspections and third party test witnessing shall be in accordance with the requirements and at the frequencies identified in ASME A17.1, Table N-1, unless otherwise directed by the OWNER. Inspections shall be performed in accordance with ASME A17.1 Sections 8.11.2 (Electric Elevators), 8.11.3 (Hydraulic Elevators), 8.11.4 (Escalators and Moving Walks), 8.11.5 (Other Equipment) and ASME A18.1 Sections 10.1 (Platform, Stage and Wheelchair Lifts). Periodic Inspections, annually and at a minimum of 3 months apart from the CAT 1 inspection or previous periodic; A17.1 Section 8.11.2.1, 8.11.3.1, 8.11.4.1, 8.11.5.4 and A18.1 Section 10.2.

1. CAT 1 Third Party Test Witnessing requirements; A17.1 Section 8.6.4.19, 8.6.5.14, 8.6.8.15, 8.6.10.1.1, and A18.1 Section 10.3.1.
2. CAT 3 Third Party Test Witnessing requirements; A17.1 Section 8.6.5.15, 8.6.10.1.1, and A18.1 Section 10.3.2
3. CAT 5 Third Party Test Witnessing requirements; A17.1 Section 8.6.4.20, 8.6.5.16, 8.6.1.1.1, and A18.1 Section 10.3.3.

**C. Acceptance Inspections and Tests**

1. New Installations shall conform to A17.1 Section 8.10.2 (Electric Elevators), 8.10.3 Hydraulic Elevators), 8.10.4 (Escalators and Moving Walks), 8.10.5.4 (Dumbwaiters) and A18.1 Section 10.4 (Platform Lifts).
2. Altered Installations shall conform to A17.1 Section 8.10.2.3, 8.10.3.3 and 8.10.4.2.

**ARTICLE V: REPORTS**

Reports to be submitted in a clear and concise manner by the PROFESSIONAL within twenty-one (21) calendar days following the evaluation/inspection of each unit (Unit = each elevator, escalator, moving walk, dumbwaiter, platform lift, etc.) or the last unit evaluated/inspected in the case that more than one (1) unit is being evaluated/inspected at the subject property. Upon the OWNER's review and approval, the PROFESSIONAL shall forward final reports to the OWNER's Client. Reports shall include, but not be limited to, the following information for each unit inspected:

**A. Condition/Maintenance Survey Evaluations**

1. Elevators – A Condition/Maintenance Survey Evaluation Report shall include, at a minimum, the following information:
  - a. Elevator/Escalator/Lift Designation
  - b. Facility Name
  - c. Building Name
  - d. Maintenance Contractor
  - e. Type of Maintenance Contract Presently in Place

- f. Identification of Major Alterations since last inspection
- g. Number of Floors Serviced
- h. Name of Person at Facility who was informed of inspection prior to and/or during performance
- i. Present utilization of elevator (i.e., Passenger, Freight, Passenger/Freight)
- j. Name of Inspector
- k. Date Inspection Took Place
- l. Date Next Test is required (i.e., no load, full load, pressure, safety)
- m. Listing of Code Violations with Code Section Reference
  - 1. Which remain outstanding from previous inspection
  - 2. Which have been complied with since last inspection
- n. New violations
- o. Listing of Recommendations
  - 1. Which remain outstanding from previous inspection
  - 2. Which have been complied with since last inspection
- p. New Recommendations
  - 1. A rough order of magnitude cost estimate, if requested
- q. Rated capacity
- r. Rated speed and actual speed
- s. Type of Operation System
- t. Control System Type
- u. Manufacturer's Name
- v. Erector's Name
- w. Cab Platform Area
- x. Number of car entrances
- y. Number of car gates or doors
- z. Confirm if top of car controller is provided
- aa. Confirm if car has been provided with emergency stop switch
- bb. Type of car safety device
- cc. Location of car safety device
- dd. Type of governor
- ee. Location of governor
- ff. Type of brake
- gg. Number of hoist ropes
- hh. Size of hoist ropes
- ii. Number of governor ropes
- jj. Size of governor ropes
- kk. Number of hoistway entrances
- ll. Number of hoistway landings
- mm. Confirm if final limit switches are provided
- nn. Number of Electric Contacts
- oo. Number of Entrances with interlocks.
- pp. Type of interlock
- qq. Manufacturer of interlock
- rr. Location of Machines

- ss. Method of guarding hoistway entrance
  - tt. Confirm adequacy of car clearances and run-bys
  - uu. Confirm adequacy of counterweight clearances and run-bys
  - vv. Type of counterweight buffer
  - ww. Method of guarding entrances to hoistway
  - xx. Guide rail material
  - yy. Year installed
2. Escalators/Moving Walks: The Condition/Maintenance Evaluation Report shall include, at a minimum, the following information:
- a. Manufacturer
  - b. Erector
  - c. Speed
  - d. Width
  - e. Maximum clearance at any point between tread and skirt plate
  - f. Year Installed
  - g. Comment on condition existing where railings enter wall balustrade as it relates to safety
  - h. Safety of treads/cleats
  - i. Adequacy of light in escalator/landings
  - j. Markings and access to emergency stop buttons
  - k. Confirm if there is a brake on the main drive shaft and if it is still operating satisfactorily
  - l. Identify if conditions exist that are conducive to foot injury
  - m. Confirm if there is an over-speed safety device
  - n. Identify if there is a broken tread chain safety
  - o. Confirm if there is a non-reversal switch
  - p. Identify if the skirt board is rigidly supported
  - q. Concerning handrail tension: Confirm if there is a stretch signal switch and light
  - r. Report that safety devices are/aren't operating properly
- B. Periodic Inspection/Third Party Test Witnessing
- Reports covering Periodic Inspections/Third Party Test Witnessing, A17.1 Section 8.11.2 (Electric Elevators), 8.11.3 (Hydraulic Elevators), 8.11.4 (Escalators and Moving Walks) and A 18.1 Section 10.3 (Platform Lifts) shall be in compliance with and contain all applicable information as indicated in these sections of ASME A17.1 or ASME A18.1.
- C. Acceptance Inspections/Tests
- Reports covering Acceptance Inspections, A17.1 Section 8.10.2 (Electric Elevators), 8.10.3 (Hydraulic Elevators), 8.10.4 (Escalators/Moving Walks), 8.10.5 (Dumbwaiters) and A 18.1 Section 10.4 (Platform Lifts) shall be in compliance with and contain all applicable information as indicated in these sections of ASME A17.1 or ASME A18.1.

**ARTICLE VI: SCHEDULING REQUIREMENTS**

A. Condition/Maintenance Survey Inspections

The Condition/Maintenance Survey Evaluation services to be performed by the PROFESSIONAL shall be on an as required basis. The PROFESSIONAL shall be required to perform all work associated with evaluation(s)/inspection(s) on a schedule agreed upon by the OWNER and the PROFESSIONAL. Reports covering any given unit shall be submitted to the OWNER within twenty-one (21) calendar days following

the inspection of such unit or the last unit evaluated/inspected in the case that more than one (1) unit is being evaluated/inspected at the subject property.

B. Acceptance Inspections/Tests

Acceptance Inspections to be performed by the PROFESSIONAL shall be on an as required basis. In such cases, the PROFESSIONAL shall be directed by the OWNER to perform the needed service, with a specific time to be mutually agreed upon. If directed by the OWNER, the PROFESSIONAL shall be required to perform any fieldwork within fourteen (14) calendar days following notification with associated report(s) to be submitted within fourteen (14) days following inspections and testing.

C. Periodic Inspections/Third Party Test Witnessing (New York State Code Facilities)

Periodic Inspections/Third Party Tests Witnessing to be performed by the PROFESSIONAL shall be on an as required basis. In such cases, the PROFESSIONAL shall be directed by the OWNER to perform the needed service, with a specific time to be mutually agreed upon. If directed by the OWNER, the PROFESSIONAL shall be required to perform any fieldwork within fourteen (14) calendar days following notification with associated form(s) to be submitted within fourteen (14) days following inspections and testing.

D. Periodic Inspections/Third Party Test Witnessing (New York City Code Facilities)

Periodic Inspections/Third Party Test Witnessing by the PROFESSIONAL shall be scheduled with the facility contractor performing the test. All inspections/tests shall be performed within the time frame required by the authority having jurisdiction. Annual NYC CAT 1 tests are required each year and NYC CAT 5 tests are required every five (5) years. Periodic inspections are required annually, and they must be 3 months apart from the CAT 1 inspection or previous periodic inspection. The PROFESSIONAL shall be required to coordinate the inspection/test date and time for each device with the elevator maintenance contractor performing the test and with appropriate facility personnel. Inspection schedules are to be updated monthly and distributed to the OWNER.

E. Other Services

All other services to be performed by the PROFESSIONAL shall be on an as required basis. In such cases, the PROFESSIONAL shall be directed by the OWNER to perform the needed service within a mutually agreed upon schedule.





**APPENDIX “C”**

**APPROVED CLASSIFICATIONS AND RATES**

**CONTRACT NO. [TBD]**

| <b>Technical Classification</b> | <b>Maximum Direct Hourly Rate</b> |             |             |             |
|---------------------------------|-----------------------------------|-------------|-------------|-------------|
|                                 | <b>2023</b>                       | <b>2024</b> | <b>2025</b> | <b>2026</b> |
| Principal (Flat)                | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |
|                                 | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |
|                                 | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |
|                                 | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |
|                                 | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |
|                                 | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |
|                                 | \$0.00                            | \$0.00      | \$0.00      | \$0.00      |

The Multiplier for all direct hourly rates excluding that of the Principal(s) is [TBD].

The rates listed represent the maximum payable under this Term Contract for Professional Services for each year of the contract term. Actual payment for services shall be based on the actual hourly rate of the employee times the hours worked by the employee performing the service as determined by payroll records or other means acceptable to the OWNER, times the approved multiplier.

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

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

**Insert Pricing Schedule once filled out by Consultant and Approved**

## APPENDIX "D"

### ADDITIONAL INSUREDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**APPENDIX "E"**  
**ADDITIONAL ITEMS**

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## **ARTICLE I: LABOR LAW PROVISIONS**

- A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in performance of the Work.
- B. The PROFESSIONAL specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
1. no laborer, workmen, or mechanic, in the employ of the PROFESSIONAL, Subconsultant, or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;
  2. the wages paid for legal day's work shall be not less than the prevailing rate of wages as defined by law;
  3. the minimum hourly rate of wages to be paid shall be not less than that stated in this Contract and shall be designated by the Commissioner of Labor of the State of New York; and
  4. the PROFESSIONAL and every Subconsultant shall post in a prominent and accessible place on the Site, a legible statement of all minimum wage rates and supplements to be paid or provided for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.
- C. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade that said persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the PROFESSIONAL or any Subconsultant shall not exceed the number submitted by the applicable standards of the New York State Department of Labor, or, in the absence of said standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.
- D. All employees of the PROFESSIONAL and each Subconsultant shall be paid in accordance with the provisions of the Labor Law. Certified payroll copies shall be provided to the OWNER upon request.
- E. The PROFESSIONAL agrees that, in case of underpayment of wages to any worker engaged in the Work by the PROFESSIONAL or any Subconsultant, the OWNER shall withhold from the PROFESSIONAL, out of payments due, an amount sufficient to pay said worker the difference between the wages required to be paid under this Contract and rates actually paid said worker for the total number of hours worked and that the OWNER may disburse said amount so withheld by the OWNER for and on account of the PROFESSIONAL to the employees to whom said amount is due. The PROFESSIONAL further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the OWNER pursuant to other provisions of this Contract.
- F. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law this Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
1. the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or
  2. less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.
- G. The PROFESSIONAL specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:
1. in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no consultant, nor any person acting on behalf of said PROFESSIONAL or Subconsultant, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. no consultant, nor any person on behalf of said PROFESSIONAL or Subconsultant shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;
  3. there may be deducted from the amount payable to the PROFESSIONAL, by the OWNER under this Contract, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Contract; and
  4. this Contract may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.
- H. The PROFESSIONAL specifically agrees to certify its payrolls and keep these certified records on site and available, and provide copies to the OWNER upon request.

## **ARTICLE II: NONDISCRIMINATION**

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

- A. The PROFESSIONAL will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.
- B. If directed to do so by the Commissioner of Human Rights, the PROFESSIONAL will send to each labor union or representative of workers with which the PROFESSIONAL has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising said labor union or representative of the PROFESSIONAL's Contract under clauses A. through G. (hereinafter called "nondiscrimination clauses"). If the PROFESSIONAL was directed to do so by the contracting agency as part of the proposal or negotiation of this Contract, the PROFESSIONAL shall request said labor union or representative to furnish a written statement that said labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status, and that said labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses and that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If said labor union or representative fails or refuses to comply with said request that it furnish such a statement, the PROFESSIONAL shall promptly notify the State Commissioner of Human Rights of said failure or refusal.
- C. If directed to do so by the Commissioner of Human Rights, the PROFESSIONAL will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- D. The PROFESSIONAL will state, in all solicitations or advertisements for employees placed by or on behalf of the PROFESSIONAL, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
- E. The PROFESSIONAL will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the PROFESSIONAL 's books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Commissioner of Labor of the State of New York for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.
- F. This Contract may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the PROFESSIONAL has not complied with these nondiscrimination clauses, and the PROFESSIONAL may be

declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the PROFESSIONAL satisfies the State Commissioner of Human Rights that the PROFESSIONAL has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the PROFESSIONAL, and an opportunity has been afforded the PROFESSIONAL to be heard publicly in accordance with the Executive Law. Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

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

### **ARTICLE III: 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.

### **ARTICLE IV: COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

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

### **ARTICLE V: CONTRACT DEEMED EXECUTORY**

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

### **ARTICLE VI: OWNERSHIP OF DOCUMENTS**

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

### **ARTICLE VII: TERMINATION OR SUSPENSION**

- A. Termination for Cause

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



terminates this Term Contract for Professional Services pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the PROFESSIONAL was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph B of this Article.

B. Termination for Convenience or Suspension of Project

The OWNER may at any time give written notice to the PROFESSIONAL terminating this Term 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 Term Contract for Professional Services or suspends the Project, the PROFESSIONAL shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

C. Payment In Case Of Termination or Suspension of Project

1. If this Term Contract for Professional Services is terminated by the OWNER pursuant to Paragraph 7A above, no further payment shall be made to the PROFESSIONAL until completion of the Project. At such time, the PROFESSIONAL 'S compensation shall, at the OWNER'S option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved Professional Services Contract Payment Requisition up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the PROFESSIONAL 'S compensation shall be reduced by all costs and damages incurred by the OWNER as a result of the default of the PROFESSIONAL.
2. If this Term Contract For Professional Services is (i) terminated by the OWNER pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by the OWNER pursuant to Paragraph 7B above, the PROFESSIONAL 'S compensation shall be calculated on the basis of services actually performed and approved by the OWNER and expenses actually incurred from the date of the last approved *Professional Services Contract Payment Requisition* up to the effective termination or suspension date and reasonable costs associated with termination or suspension. In no event shall the PROFESSIONAL be entitled to compensation in excess of the Professional Contract Price.
3. If this Term Contract for Professional Services is suspended less than four (4) months by the OWNER pursuant to Paragraph 7B above, the PROFESSIONAL specifically agrees that such suspension, interruption or delay of the performance of the services pursuant to this item shall not increase the cost of the Professional Services.
4. Time of completion set forth in the Project Design Schedule may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption or delay; such determination shall be set forth in writing by the OWNER.

**ARTICLE VIII: SUSPENSION OR ALTERATION**

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

**ARTICLE IX: LAWS OF THE STATE OF NEW YORK**

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

**ARTICLE X: CODES**

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

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

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

**ARTICLE XI: GOVERNMENT PROVISIONS**

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

**ARTICLE XII: COOPERATION**

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

**ARTICLE XIII: LATE PAYMENT**

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

**ARTICLE XIV: DEATH OF THE PROFESSIONAL**

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

PROFESSIONAL to complete the Project. If the PROFESSIONAL is a professional or other corporation, then this paragraph shall not be applicable.

#### **ARTICLE XV: OWNER-PROFESSIONAL RELATIONSHIP**

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

#### **ARTICLE XVI: PROTECTION OF LIVES AND HEALTH**

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

#### **ARTICLE XVII: AFFIRMATIVE ACTION AND NEW YORK STATE BUSINESS AND LABOR PARTICIPATION**

RESERVED.

#### **ARTICLE XVIII: NYS VENDOR RESPONSIBILITY QUESTIONNAIRE AND CONTINUING INTEGRITY**

A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.

B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the Professional shall, within ten days following either oral or written notice that it must comply, submit evidence of a duly executed NYS Vendor Responsibility Questionnaire (VRQ) to the OWNER.

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

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

D. The Professional shall at all times during the Contract term remain responsive and responsible. The Professional shall also monitor each Subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term. The Professional agrees, if requested by the President of the OWNER or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Professional shall immediately notify OWNER of any material or adverse information pertaining to the Professional or any Subconsultant, regardless of tier.

E. The President of the OWNER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of the Professional. In the event of such suspension, the Professional will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Professional

shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of the OWNER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

- F. Notwithstanding any other provision of this Contract, upon written notice to the Professional, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, the Contract may be terminated by the President of the OWNER or his or her designee at the Professional's expense where the Professional is determined by the President of the OWNER or his or her designee to be non-responsible. In such event, the President of the OWNER or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.
- G. In selecting a Subconsultant or Subcontractor, the Professional shall consider whether the proposed Subconsultant or Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The Professional shall not Subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The Professional shall not Subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The Professional shall not Subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192.
- H. In selecting a Subconsultant or Subcontractor, the Professional shall also consider whether the proposed Subconsultant or Subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Work on the Project.
- I. Prior to award of a Contract, the Professional shall require any Subconsultant or Subcontractor, with a subcontract value of two million dollars (\$2,000,000) or greater, to submit to the OWNER a certified NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for review. At any time during the term of the Contract, the OWNER may request, and the Professional, Subconsultant or Subcontractor shall provide, a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for any Subcontractor performing Work on the Project for review. Additionally, the OWNER or Professional may require a Subconsultant or Subcontractor to update, recertify and resubmit a previously submitted NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) to the OWNER upon request. Refer to General Conditions Article 19 – Executive Order No. 125.

#### **ARTICLE XIX: PROHIBITED INTERESTS/ETHICAL CONDUCT – PROFESSIONALS**

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

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

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

#### **ARTICLE XX: COOPERATION WITH INVESTIGATIONS**

The PROFESSIONAL agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Internal Affairs (“OIA”) of the OWNER or any other duly authorized representative of the OWNER (“Representative”).

The PROFESSIONAL shall grant the OIA or the Representative the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the PROFESSIONAL, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the PROFESSIONAL, relating to the PROFESSIONAL. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Subcontractor, PROFESSIONAL and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. At the OIA’s or the Representative’s request, said materials shall be provided in a computer readable format, where available. At the request of the OIA or the Representative, the PROFESSIONAL shall execute such documents, if any, as are necessary to give the OIA or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the PROFESSIONAL but not currently in the PROFESSIONAL’s physical possession. The PROFESSIONAL shall not enter into any agreement with a Subcontractor, PROFESSIONAL or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The PROFESSIONAL shall assist the OIA or the Representative in obtaining access to past and present Subcontractor, PROFESSIONAL and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

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

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

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

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

**ARTICLE XXI: 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.

**ARTICLE XXII: 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.

**ARTICLE XXIII: 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.

**ARTICLE XXIV: GREEN AND CLEAN STATE BUILDINGS**

RESERVED.

**ARTICLE XXV: 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 5.1 of this Contract – Termination for Cause.

**ARTICLE XXVI: NONCOMPLIANCE**

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