

STIPEND PAYMENT AGREEMENT

THIS STIPEND PAYMENT AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 20____, by and between the Dormitory Authority of the State of New York ("DASNY"), and _____ ("Proposer").

WITNESSETH:

WHEREAS, as part of the procurement process for the Project the Proposer shall submit a detailed proposal in response to a Request for Proposal ("RFP") for the FLDDSO Wings A & B Renovation (the "Project") and, if selected as the Selected Proposer in accordance therewith, Proposer will enter into the Design-Build Contract for the Design and Construction of the renovation located at FLDDSO Monroe Development (the "Contract") for the Project with DASNY; and

WHEREAS, as part of the procurement process for the Project, Proposer shall provide and/or furnish to DASNY, certain intellectual property, materials, information and ideas including, but not limited to, such matters that are: (a) conveyed orally and in writing during proprietary meetings or interviews; and (b) contained in, related to or associated with Proposer's proposal including, but not limited to, written correspondence, designs, drawings, plans, exhibits, photographs, reports, printed material, tapes, electronic disks, or other graphic and visual aids (collectively "Proposer's Intellectual Property"); and

WHEREAS, DASNY is willing to provide a payment to Proposer, subject to the express conditions stated in this Agreement, to obtain certain rights in Proposer's Intellectual Property; and

WHEREAS, Proposer wishes to receive the payment offered by DASNY, in exchange for granting DASNY the rights set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

1. DASNY's Rights in Proposer's Intellectual Property. Proposer hereby conveys to DASNY all rights, title, and interest, free and clear of all liens, claims, and encumbrances, in Proposer's Intellectual Property, which includes, without restriction or limitation, the right of DASNY, and anyone contracting with DASNY, to incorporate any ideas or information from Proposer's Intellectual Property into: (a) the Contract and the Project; (b) any other contract awarded in reference to the Project; or (c) any subsequent procurement by DASNY. In receiving all rights, title, and interest in Proposer's Intellectual Property, DASNY is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Proposer's Intellectual Property, and Proposer agrees that it will, at the request of DASNY, execute all papers and perform all other acts that may be necessary to ensure that DASNY's rights, title, and interest in Proposer's Intellectual Property are protected. The rights conferred herein to DASNY include, without limitation, DASNY's ability to use Proposer's Intellectual Property without the obligation to notify or seek permission from Proposer.

2. Proposal Payment. DASNY agrees to pay Proposer, and Proposer agrees to accept, the lump sum amount of Forty Thousand Dollars (\$40,000.00) (the "Proposal Payment"), which such payment (a) constitutes payment in full to Proposer for the conveyance of Proposer's Intellectual Property to DASNY in accordance with this Agreement and (b) is conditioned upon: (i) Proposer's Proposal being, in the sole discretion of DASNY, responsive to the RFP; (ii) Proposer complying with all other terms and conditions of this Agreement; and either (iii) Proposer not being awarded the Contract or (iv) Proposer having been awarded the Contract but the Project is cancelled through no fault of the Proposer.
3. Payment Due Date. Subject to the conditions set forth in this Agreement, DASNY will make payment of the Proposal Payment to the Proposer within forty-five (45) days after the latest of: (a) notice from DASNY that it has awarded the Contract to another Proposer; (b) notice from DASNY that the procurement for the Project has been cancelled and that DASNY will not award the Contract to any Proposer; or (c) notice from DASNY that the Proposer has been awarded the Contract but the Project is cancelled through no fault of the Proposer.
4. Effective Date of this Agreement. The rights and obligations of DASNY and Proposer under this Agreement, including DASNY's ownership rights in Proposer's Intellectual Property, vest upon the date that Proposer's Proposal is submitted to DASNY. Notwithstanding the above, if Proposer's Proposal is determined by DASNY, in its sole discretion, to be nonresponsive to the RFP, then Proposer is deemed to have waived its right to obtain the Proposal Payment hereunder, and DASNY will have no obligations under this Agreement.
5. Indemnity. Subject to the limitation contained below, Proposer will, at its own expense, indemnify, defend, and hold harmless DASNY and its agents, directors, officers, employees, representatives, and contractors from all claims, costs, expenses, liabilities, demands, or suits at law or equity ("Claims") of, by or in favor of or awarded to any third party arising in whole or in part from: (a) the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives, or subcontractors; or (b) breach of any of Proposer's obligations under this Agreement, including its representation and warranty under Section 7 hereof. This indemnity will not apply with respect to any Claims caused by or resulting from the sole gross negligence or willful misconduct of DASNY, or its agents, directors, officers, employees, representatives, or contractors.
6. Assignment. Proposer will not assign this Agreement without DASNY's prior written consent, which consent may be given or withheld in DASNY's sole discretion. Any assignment of this Agreement without such consent will be null and void.
7. Authority to Enter into this Agreement. By executing this Agreement, Proposer specifically represents and warrants that it has the authority to convey to DASNY all rights, title, and interest in Proposer's Intellectual Property including, but not limited to, any rights that might have been vested in Team Members, Subcontractors, consultants or anyone else who may have contributed to the development of Proposer's Intellectual Property, free and clear of all liens, claims and encumbrances.

8. Miscellaneous.

- a. Proposer and DASNY agree that Proposer, its Team Members, and their respective employees are not agents of DASNY as a result of this Agreement.
- b. Any capitalized term used herein but not otherwise defined will have the meanings set forth in the RFP.
- c. This Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- d. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of New York, validity of the remaining portions or provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
- e. This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

By: _____

Name: _____

Title: _____

[Insert Proposer's Name]

By: _____

Name: _____

Title: _____

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