



# **JOB ORDER CONTRACTING PROGRAM**

## **BIDDING DOCUMENTS & INFORMATION**

**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000

**BUFFALO:** 6047 Transit Road, Suite 103, East Amherst, NY 14051 | 716-566-4400

**NEW YORK CITY:** 28 Liberty Street, Fl 55, New York, NY 10005 | 212-273-5000

**ROCHESTER:** 3495 Winton Place, Building C, Suite 1, Rochester, NY 14623 | 585-461-8400

**DASNY**  
**WE FINANCE, DESIGN & BUILD**  
**NEW YORK'S FUTURE.**  
[www.dasny.org](http://www.dasny.org)

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GENERAL CONDITIONS

**D A S N Y**

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

# **JOB ORDER CONTRACTING PROGRAM**

## **BIDDING REQUIREMENTS**

**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000

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**NOTICE TO BIDDERS**  
**Dormitory Authority – State of New York (“DASNY”)**  
**JOB ORDER CONTRACTS**  
**REGIONS 1, 4, 7, 8, 9, and 10**  
**DASNY Project # 1000509999**

Sealed bids for the above work located in the regions listed below will be received by DASNY at its office located at 515 Broadway, Albany, NY 12207. Each bid must be identified, on the outside of the envelope, with the name and address of the bidder and designated as a bid for the region and trade noted below. When a sealed bid is placed inside another delivery jacket, the bid delivery jacket must be clearly marked on the outside **“BID ENCLOSED”** and **“ATTENTION: CONSTRUCTION CONTRACTS UNIT. – MOLLY GRUSS”** DASNY will not be responsible for receipt of bids which do not comply with these instructions.

Only those bids in the hands of DASNY, available to be read at **2:00 PM** local time on **December 18, 2024**, will be considered. Bids shall be publicly opened and read aloud. Bid results can be obtained on the DASNY website; <http://www.dasny.org>, forty-eight (48) hours after the Bid Opening.

**All individuals who plan to attend pre-bid meetings or bid openings in person will be required to present government-issued picture identification to building security officials and obtain a visitors pass prior to attending the bid opening.**

**Individuals and entities submitting bids in person or by private delivery services should allow sufficient time for processing through building security to assure that bids are received prior to the deadline for submitting bids.**

**All bid openings will be made available for viewing live via Zoom at [www.zoom.us](http://www.zoom.us). To enter the meeting, select “Join a Meeting” then enter Meeting Id 353 471 6521, Password 351895. Individuals are strongly encouraged to utilize this public viewing option as an alternative to in person attendance at bid openings.**

The Pre-Bid Meeting for Prospective Bidders shall be held on **December 4, 2024, at 10:00 AM**, via Zoom at [www.zoom.us](http://www.zoom.us). To register for the Pre-Bid Meeting, visit the following link: [https://dasny.zoom.us/join/register/tZ0vfuiopj4vGtN8S3\\_kMD8rj3bEh2t4\\_xGj](https://dasny.zoom.us/join/register/tZ0vfuiopj4vGtN8S3_kMD8rj3bEh2t4_xGj). To enter the meeting, select “Join a Meeting” then enter Meeting Id 892 9108 5507, Password 308387.

**Due to the specialized nature of the JOC Program attending the Pre-Bid Meeting is strongly recommended.**

A Complete Set of all Contract Documents can be found on DASNY’s website: <https://www.dasny.org/opportunities/rfps-bids/construction-contracts>.



**Contract(s) to be bid:**

REGION (S)	TRADE	CR #	ESTIMATED ANNUAL CONTRACT VOLUME (PER CONTRACT YEAR)	# OPTIONS
1	General Construction	619	\$1,500,000.00	3
4	HVAC	620	\$500,000.00	3
4	Plumbing	621	\$500,000.00	3
7	General Construction	622	\$500,000.00	3
8	General Construction	623	\$500,000.00	3
9	Electrical	624	\$500,000.00	3
10	Electrical	625	\$500,000.00	3
10	General Construction	626	\$500,000.00	3

Contract Term = Base Term: One (1) year from the issuance of a Notice of Contract Award. Option Period: Both the Owner and the Contractor must mutually agree to extend the Contract for an option period. The Contract includes three (3) Option Periods, and each term of the Option Period is one (1) year.

Notwithstanding this designation, DASNY reserves the right, at its sole discretion, to assign work to any contractor in any geographic area.

REGION(S)	COUNTIES INCLUDED
1	New York (Manhattan), Bronx, Kings (Brooklyn), Richmond (Staten Island), and Queens
2	Nassau, and Suffolk
3	Westchester, Rockland, and Putnam
4	Orange, Sullivan, Delaware, Ulster, Dutchess, Greene, and Columbia
5	Rensselaer, Albany, Schenectady, Otsego, Schoharie, Fulton, Montgomery, Saratoga, Washington, Warren, Hamilton, and Herkimer
6	Essex, Clinton, and Franklin
7	Lewis, Jefferson, and St. Lawrence
8	Broome, Tioga, Tompkins, Cortland, Chenango, Cayuga, Onondaga, Madison, and Oswego
9	Monroe, Wayne, Livingston, Ontario, Seneca, Yates, Steuben, Schuyler, and Chemung
10	Niagara, Orleans, Genesee, Erie, Wyoming, Chautauqua, Allegany, and Cattaraugus

**For Region 1 (New York (Manhattan), Bronx, Kings (Brooklyn), Richmond (Staten Island), and Queens), Region 2 (Nassau, and Suffolk counties) and Region 3 (Westchester, Rockland, and Putnam) only:** DASNY has determined that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages and any local history of labor unrest are best met by use of a Project Labor Agreement ("PLA"). The successful low bidder, as a condition of being awarded a Contract, will be required to execute the PLA described in the

Information for Bidders and included in the Contract Documents. See Section 18.0 of the Information for Bidders of the Contract Documents for additional information. All subcontractors of every tier will be required to agree to be bound by the PLA. The threshold for DASNY's PLA is \$3,000,000 in the five (5) boroughs of New York City, and \$1,500,000 in Nassau, Suffolk, and Westchester counties. However, notwithstanding the Estimated Annual Contract Volume, PLA Factors must be provided for any trade contract in Regions 1, 2, and 3. DASNY's PLA may be required on a per-project basis even if the contract value is less than the applicable threshold.

Contractors who currently hold an active JOC term contract with 12 months or more remaining on any contract term must carefully consider their ability to comply with all program requirements and to perform to DASNY's standards and expectations for its JOC contractors, before bidding on an additional JOC term contract, especially for a contract of the same trade and in the region as their current contract.

In accordance with State Finance Law § 139-j and § 139-k, this solicitation includes and imposes certain restrictions on communications between DASNY personnel and a prospective bidder during the procurement process. Designated staff for this solicitation is: **Josh Powers, DASNY, 518-257-3341, JPowers@dasny.org or DASNY at ccontracts@dasny.org**. Contacts made to other DASNY personnel regarding this procurement may disqualify the prospective bidder and affect future procurements with governmental entities in the State of New York. For more information pursuant to this law, refer to the DASNY website; <http://www.dasny.org> or the OGS website; <http://www.ogs.ny.gov>.

Robert J. Rodriguez, President & CEO  
November 8, 2024

BIDDING REQUIREMENTS for CONSTRUCTION  
JOB ORDER CONTRACTING  
INFORMATION FOR BIDDERS

**Section 1.0 - Pre-Bid Meeting & Bid Opening**

The Pre-Bid Meeting for Prospective Bidders shall be held on **December 4, 2024, at 10:00 AM**, via Zoom at [www.zoom.us](https://www.zoom.us). To register for the Pre-Bid Meeting, visit the following link: <https://dasny.zoom.us/join/89291085507>. To enter the meeting, select "Join a Meeting" then enter Meeting Id 892 9108 5507, Password 308387. Individuals are strongly encouraged to utilize this public viewing option as an alternative to in person attendance.

**Due to the specialized nature of the JOC Program attending the Pre-Bid Meeting is strongly recommended.**

**All individuals who plan to attend bid openings in person will be required to complete and present government-issued picture identification to building security officials and obtain a visitors pass prior to attending the bid opening.**

**Individuals and entities submitting bids in person or by private delivery services should allow sufficient time for processing through building security to assure that bids are received prior to the deadline for submitting bids.**

**All bid openings will be made available for viewing live via Zoom at [www.zoom.us](https://www.zoom.us). To enter the meeting, select "Join a Meeting" then enter Meeting Id 550 592 4065, Password 730959. Individuals are strongly encouraged to utilize this public viewing option as an alternative to in person attendance at bid openings.**

**Section 2.0 - Examination of the Contract Documents and Site**

A. Prospective bidders shall examine the Contract Documents carefully and, before bidding, shall make a written request to the Owner, for an interpretation or correction of any ambiguity, inconsistency or error therein which should be discovered by a reasonably prudent bidder. Every request for such interpretation must be received at least ten (10) days prior to the date fixed for the opening of the bid. Such interpretation or correction, as well as additional Contract provisions the Owner shall decide to include, shall be issued in writing by the Owner as an Addendum, which shall be provided to each prospective bidder recorded as having received a copy of the Contract Documents from the Owner and shall be available at the places where the Contract Documents are available for inspection by prospective bidders. Such Addendum shall become a part of the Contract Documents and shall be binding on prospective bidders whether or not the bidder receives or acknowledges the actual notice of such Addendum. Requirements of the Contract Documents shall apply to Addenda.

1. **Deadline for written requests for interpretation or correction of bid documents shall be December 8, 2024. Please submit all written requests for interpretation or correction of bid documents to Josh Powers, DASNY, [jpowers@dasny.org](mailto:jpowers@dasny.org) and Construction Contracts at [ccontracts@dasny.org](mailto:ccontracts@dasny.org).**

B. Only interpretations, corrections or additional Contract provisions issued in writing by the Owner as Addenda shall be binding. No officer, agent or employee of the Owner is authorized to explain or interpret the Contract Documents by any other method and any such explanation or interpretation, if given, must not be relied upon by the bidder.

BIDDING REQUIREMENTS for CONSTRUCTION  
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- C. At the time of the opening of bids, each bidder shall be presumed to have inspected the Site (if applicable), to have read and to be familiar with the Contract Documents. The failure or omission of any bidder to receive or to examine any Contract Document shall in no way relieve any bidder from any obligation in respect to the bid of such bidder.

**Section 3.0 - Qualifications of Bidder**

- A. The Owner may make such investigation as the Owner deems necessary to determine the responsibility of any bidder or to determine the ability of any bidder to perform the Work. Bidders shall furnish to the Owner all information and data required by the Owner, including complete financial data, within the time and in the form and manner required by the Owner. The Owner reserves the right to reject any bid if the evidence required by the Owner is not submitted as required or if the evidence submitted by or the investigation of any bidder fails to satisfy the Owner that the bidder is responsible or is able or qualified to carry out the obligations of the Contract or to complete the Work as contemplated.
- B. In the event the bidder fails to establish to the satisfaction of the Owner, as set forth in (A) above, that the bidder is both responsible and meets the qualification requirements of the solicitation, the Owner reserves the right, in its sole discretion, to reject any bid.
- C. The submission of a bid or proposal in connection with this Notice to Bidders or Information to Bidders constitutes a material representation by the bidder that, to the best of its knowledge, after reasonable investigation and due diligence, the bidder's aggregate bonding capacity limit is equal to or in excess of the Estimated Annual Contract Volume (EACV) of the JOCS term contract as set forth herein. Bidder acknowledges that DASNY will reasonably rely on this representation in the making of awards for the Contract.
- D. Contract Experience Requirements for Plumbing Contractor:
1. The Bidder or its Principals for the Plumbing contract shall meet the following minimum requirements.
    - a. The Bidder shall have completed or substantially completed in each of the last two (2) years at least five (5) projects each with a contract value of at least \$200,000.
      1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
      2. The Bidder must have employed his own workforce for at least 40% of the labor for the trade on which they are bidding.
    2. The Bidder shall have had annual gross revenues at least double the Estimated Annual Contract Volume for the contract bid in each of the last two years. These revenues must come from Projects where they were the prime or subcontractor for the type of Work they are bidding.
    3. The Bidder shall be a Licensed Plumbing Contractor in New York City (Region 1 only).

BIDDING REQUIREMENTS for CONSTRUCTION  
JOB ORDER CONTRACTING  
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4. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

E. Contract Experience Requirements for Electrical Contractor:

1. The Bidder or its Principals for the Electrical contract shall meet the following minimum requirements.
  - a. The Bidder shall have completed or substantially completed in each of the last two (2) years at least five (5) projects each with a contract value of at least \$200,000.
    1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
    2. The Bidder must have employed his own workforce for at least 40% of the labor for the trade on which they are bidding.
2. The Bidder shall have had annual gross revenues at least double the Estimate Annual Contract Volume for the contract bid in each of the last two years. These revenues must come from Projects where they were the prime or subcontractor for the type of Work they are bidding.
3. The Bidder shall be a Licensed Electrical Contractor in New York City (Region 1 only).
4. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

F. Contract Experience Requirements for Mechanical Contractor:

1. The Bidder or its Principals for the Mechanical contract shall meet the following minimum requirements.
  - a. The Bidder shall have completed or substantially completed in each of the last two (2) years at least five (5) projects each with a contract value of at least \$200,000.
    1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
    2. The Bidder must have employed his own workforce for at least 40% of the labor for the trade on which they are bidding.
2. The Bidder shall have had annual gross revenues at least double the Estimated Annual Contract Volume for the contract bid in each of the last two years. These revenues must come from Projects where they were the prime or subcontractor for the type of Work they are bidding.

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3. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

G. Contract Experience Requirements for Abatement Contractor:

1. The Bidder or its Principals for the Abatement contract shall meet the following minimum requirements.
  - a. The Bidder shall have completed or substantially completed in each of the last two (2) years at least five (5) projects each with a contract value of at least \$200,000.
    1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
    2. The Bidder must have employed his own workforce for at least 40% of the labor for the trade on which they are bidding.
2. The Bidder shall have had annual gross revenues at least double the Estimated Annual Contract Volume for the contract bid in each of the last two years. These revenues must come from Projects where they were the prime or subcontractor for the type of Work they are bidding.
3. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

H. Contract Experience Requirements for General Contractor (GC):

1. The Bidder or its Principals for the GC contract shall meet the following minimum requirements.
  - a. The Bidder shall have completed or substantially completed in each of the last two (2) years at least five (5) projects each with a contract value of at least \$200,000.
    1. The projects used for qualification listed above must be where the Bidder was the prime contractor for the specific trade on which they are bidding.
    2. The Bidder must have employed his own workforce for at least 40% of the labor for the trade on which they are bidding.
  - b. The Bidder shall have had annual gross revenues at least double the Estimated Annual Contract Volume for the contract bid in each of the last two years. These revenues must come from Projects where they were the prime or subcontractor for the type of Work they are bidding.

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- c. Experience will be viewed from both the perspective of completed projects of comparable scope and magnitude as well as the experience and depth of the bidder's personnel. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the Owner.

**Section 4.0 - Executive Order No 170.1 – Uniform Guidelines for Responsibility Determinations**

The criteria contained in Executive Order No. 170.1 will also be applied in the bid review process. In the event of any conflict between the criteria in Executive Order No. 170.1 and the criteria in the Contract Documents, the stricter criteria shall apply.

**Section 5.0 - Executive Order No 125 – NYS Vendor Responsibility Questionnaire**

- A. For any contract \$10,000 or more, the New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) Certification Page shall be submitted by the apparent low bidder to the Owner within five (5) business days of receipt of the Pre-Award Notification Letter. Executive Order No. 125 dated May 22, 1989 is found at 9 NYCRR §4.125.
- B. The apparent low bidder shall submit a New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2) Certification Page to the Owner for each proposed subcontractor where the subcontract for the Work of the Project exceeds two million dollars and for any other subcontractor upon request of the Owner. **The Owner recommends that any subcontractors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System (the "System") prior to submission of the bid**
- C. **The Owner recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System (the "System") prior to submission of the bid.** 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>. Vendors 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). Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the System website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Owner (DASNY) or OSC's Help Desk for a copy of the paper form.

**Section 6.0 – 2005 Procurement Lobbying Law**

- A. Pursuant to provisions of the General Conditions, Article 18 – 2005 Procurement Lobbying Law, for any contract \$15,000 or more, the 2005 PROCUREMENT LOBBYING LAW – CERTIFICATION as part of the Omnibus Procurement Certification form is to be submitted with the bid.
- B. All bidders, domestic and foreign, must be in compliance with New York State business registration requirements. Contact the NYS Department of State regarding compliance.

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**Section 7.0 - Approval of Subcontractors/Subcontract Limits**

- A. Pursuant to provisions of the General Conditions, Article 6 - Subcontracts, bidders shall within the time specified by the Owner, submit to the Owner the names of the Subcontractors which the bidder proposes to use on the project. The Owner reserves the right to reject any bid if the names of proposed Subcontractors, or additional subcontractor information, are not submitted as required.
- B. Self-Performance Requirements/Subcontracting Limits
1. The contractors shall perform at least the dollar value as stated in the table below of the work performed under the entire contract with its own forces and not with subcontractors. The purchase of materials, not installed with the contractor's own forces, will not be counted for purposes of determining whether the contractor met the goal as stated in the table below. The cost of supervising subcontractors will also not count towards the goal as stated in the table below.

All Trades – All Applicable Regions	40%
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The Director, Procurement may, in writing, modify these requirements where the Director determines it is in the best interest of the owner.

**Section 8.0 - Opportunity Programs Requirements**

- A. Pursuant to provisions of the General Conditions, Article 20 – Opportunity Programs and Article 21 – Service-Disabled Veteran Owned Businesses, the Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS and Article 17-B, SERVICE DISABLED VETERAN OWNED BUSINESSES. These requirements will include: equal employment opportunities for minority group members and women (EEO), plus opportunities for minority and women-owned business enterprises (M/WBE). The Contractor's demonstration of good faith efforts shall also be a part of these requirements.
- B. The Owner has adopted a goal-oriented approach to ensure employment of EEO & M/WBE at a level commensurate with their capability and availability. The Owner has determined that the goals for EEO & M/WBE participation in the Work of the Contract are follows:

REGION	TRADE	CR#	MBE %	WBE %	SDVOB %	EEO%
1	General Construction	619	18%	12%	6%	45%
4	HVAC	620	18%	12%	6%	10%
4	Plumbing	621	18%	12%	6%	10%
7	General Construction	622	18%	12%	6%	10%
8	General Construction	623	18%	12%	6%	10%
9	Electrical	624	18%	12%	6%	10%
10	Electrical	625	18%	12%	6%	15%
10	General Construction	626	18%	12%	6%	15%



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- C. For each project assigned under an awarded JOC Contract the low bidder shall submit the following as referenced in the Contract Documents, within the specified time frames:
1. Statewide Utilization Management Plan ("Utilization Plan"), Refer to Article 20 – Opportunity Programs, specifically Section 20.03 for Submittal Requirements;
  2. Utilization Plan Cover Sheet
  3. Standard Equal Employment Opportunity Policy Statement
  4. Permanent Employee Distribution
  5. Scope Verification Form
  6. Monthly Workforce Utilization Report
  7. Compliance Report
- D. Failure to provide the above plans and the aforementioned information may be cause for rejection of the bid, and / or job order and payment request being denied.

**Section 9.0 - Preparation of Bids**

- A. Bids must be submitted on the Form of Bid supplied by the Owner in the bidder's full legal name or the bidder's full legal name plus a registered assumed name. Bids shall be enclosed in a sealed envelope, addressed to the Owner, and marked with the name and address of the bidder, and the name of the Project. All blank spaces for bid prices must be filled in, using both words and figures, words to take precedence over figures. Conditional bids shall not be accepted. Bids shall not contain any recapitulation of the Work to be done. No oral, facsimile transmittal, electronic or telephonic bids or modifications of bids shall be considered. Bids shall contain an original signature of the bidder in the space provided on the Form of Bid. **Note: In addition, prospective bidders are advised that the Contract Documents for this Project contain new "GENERAL CONDITIONS for JOC - CONSTRUCTION" dated June 20, 2024 that contain significant revisions from those documents previously contained in DASNY's Contract Documents. Prospective bidders are further advised to review applicable sections of these General Conditions for any potential impact on their bid price prior to submittal of the bid.**
- B. Bids that are illegible or that contain omissions, alterations, additions, or items not called for in the bidding documents may be rejected as not responsive. Any bid which modifies, limits, or restricts all or any part of such bid, other than as expressly provided for in the Contract Documents, may be rejected as not responsive.
- C. The Owner may reject any bid not prepared and submitted in accordance with the provisions of the Contract Documents.
- D. Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof and any bid received after such time and date shall not be considered.
- E. No bidder may withdraw a bid within sixty (60) days after the actual date of the opening thereof. After sixty (60) days, the Owner, at its sole discretion, may request that the bidder extend the expiration of the bid, as often as deemed necessary, to a date set by the Owner. After sixty (60) days, if the Contract has not been awarded and the Owner elects to not request an extension, the Owner may consider the bid as expired and return the bid security.

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- F. No action or proceeding concerning in any way any bid for the Contract or the Contract shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue.

**Section 10.0 – Bid Security and Estimated Annual Contract Volumes**

- A. Each bid must be accompanied by a certified check of the bidder made payable to the Dormitory Authority or by a bid bond prepared on the form of bid bond included in the Contract Documents, duly executed by the bidder as principal, and the surety thereon. Bidder failure to provide bid security as prescribed, may result in rejection of the bid. Bid bonds submitted as bid security shall contain an original signature of both the bidder and the surety providing the bid bond in the space provided on the Form of Bid Bond. The surety shall be authorized to do business in the State of New York by the New York State Department of Financial Services, 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.

1. The Bid Security and Estimated Annual Contract Volumes of each contract to be awarded are stated below.

REGION	TRADE	CR #	PLA	BID SECURITY	ESTIMATE ANNUAL CONTRACT VOLUME (PER CONTRACT YEAR)
1	General Construction	619	Yes	\$25,000	\$1,500,000.00
4	HVAC	620	No	\$25,000	\$500,000.00
4	Plumbing	621	No	\$25,000	\$500,000.00
7	General Construction	622	No	\$25,000	\$500,000.00
8	General Construction	623	No	\$25,000	\$500,000.00
9	Electrical	624	No	\$25,000	\$500,000.00
10	Electrical	625	No	\$25,000	\$500,000.00
10	General Construction	626	No	\$25,000	\$500,000.00

2. The Minimum Contract Value for all contracts is \$0.
3. A separate Bid Bond is required for each Bid.
4. During the contract period, the Contractor may receive Job Orders that surpass the Estimated Annual Contract Volume. However, the Contractor is not guaranteed to receive this volume of Work.
- B. Any certified checks submitted as bid security shall be returned to all except the three (3) lowest bidders after the opening of bids, and the remaining checks shall be returned to the three (3) lowest bidders after the Owner and the accepted bidder have executed the Agreement, or if no Agreement has been executed within sixty (60) days after the date of the opening of bids, upon demand of the bidder at any time thereafter so long as such bidder has not been notified of the acceptance of such bid.

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- C. Bid Bonds of all but the bidder executing the Agreement shall be destroyed by the Owner either 1) after the Owner and the accepted bidder have executed the Agreement, or 2) if no Agreement has been executed, sixty (60) days after the date of the opening of bids.
- D. Apparent Low Bidders will be required to submit a letter from their Surety attesting to their overall and per project bonding limits.

**Section 11.0 – Compliance with Laws**

The bidder shall sign and submit with the bid the COMPLIANCE WITH LAWS – CERTIFICATION as part of the Omnibus Procurement Certification form included in the Contract Documents.

**Section 12.0 - Bid Designation**

- A. Each bid shall bear on the outside of the envelope the name of the bidder, its address, its telephone number and designated as bid for the following:

NAME OF PROJECT: Job Order Contracting Program

And

TRADE	REGION	CR #
General Construction	1	619
HVAC	4	620
Plumbing	4	621
General Construction	7	622
General Construction	8	623
Electrical	9	624
Electrical	10	625
General Construction	10	626

Write in appropriate Contract - ONLY one per envelope.

- B. Bids submitted via Mail, Express Service, or Messenger Service shall indicate on the exterior of the envelope the words "BID ENCLOSED; FOR TRADE: \_\_\_\_\_ ; REGION: \_\_\_\_\_ ; CR NUMBER: \_\_\_\_\_ " (Fill in Appropriate Trade, Region and CR Number using information in table above).
- C. *No more than ONE Bid per envelope.*
- D. Notwithstanding the contract designation, the Owner reserves the right, at its sole discretion, to assign Work to any contractor in any county covered by any of the contracts herein bid.

**BIDDING REQUIREMENTS for CONSTRUCTION  
JOB ORDER CONTRACTING  
INFORMATION FOR BIDDERS**

**Section 13.0 - Award of Contract**

- A. Award of the Contract shall be made to the bidder submitting the lowest bid, if:
1. In the opinion of the Owner, the bid is responsive to the bid solicitation, and such bidder is qualified to perform the Work involved, is responsible and reliable.
  2. The bidder submits required documents as described under Section 17.0 – Forms and Documents.
  3. On all contracts, the bidder furnishes within Seventy-two (72) hours after low bidder notification, documentation of efforts to encourage the participation of New York State enterprises as suppliers and subcontractors. Also, in a post-award compliance report, furnish documentation of efforts to provide notification to New York State residents of employment opportunities, through the New York State Job Service Division, or provide such notification in a manner consistent with existing collective bargaining contracts or agreements.
- B. The Owner reserves the sole and exclusive right to reject any bid or all bids, to waive any informalities or irregularities or omissions in any bid received or to afford any bidder an opportunity to remedy any informality or irregularity.
- C. As part of the Job Order Contracting Program, the Owner reserves to itself, in its sole judgment, the right to limit the number of Job Order Contracts awarded to any single bidder or contractor. Subject to the limitations appearing above and elsewhere in this bid package, the contracts will be awarded, if at all, to the combination of bids resulting in the least overall cost to the Owner.
- D. The execution of the Agreement shall not be construed as a guarantee by the Owner that the plant, equipment and the general scheme of proposed operations of a bidder is either adequate or suitable for the satisfactory performance of the Work or that other data supplied by a bidder is accurate.

**Section 14.0 - Required Bonds**

- A. If the Contractor's Proposal is one hundred thousand dollars (\$100,000.00) or more or if the Contractor's Proposal plus Job Order Amount(s) under this Contract are cumulatively one hundred thousand dollars (\$100,000.00) or more, the Contractor shall provide (1) a Performance Bond in the form attached hereto in an amount at least equal to 100% of the Contractor's Proposal as security for the faithful performance of the Work of the Job Order, and (2) the Contractor shall also provide a Payment Bond in the form attached hereto in an amount at least equal to 100% of Contractor's Proposal for the payment of all persons performing labor or providing materials in connection with the Work of the Job Order. The Contractor shall execute the Performance bond form and the Payment Bond form included in the Contract Documents. The Contractor shall provide such bonds to Owner within five (5) work days of the date that the Owner informs the Contractor that its Proposal has been accepted. Owner's receipt from Contractor of such Performance and Payment Bonds acceptable to Owner is a strict condition precedent to the issuance of the Job Order and the Notice to Proceed.
- B. If at any time the Owner, in its sole and exclusive discretion, shall become dissatisfied with any surety or sureties upon the Performance Bond or the Payment Bond, or if for any other reason said bonds

BIDDING REQUIREMENTS for CONSTRUCTION  
JOB ORDER CONTRACTING  
INFORMATION FOR BIDDERS

shall cease to be adequate security to the Owner, the Contractor shall, within five (5) calendar days after written notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.

- C. The surety company, on all bonds, shall be authorized 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.

### **Section 15.0 - Damages for Failure to Enter into Agreement**

The successful bidder, upon failure or refusal to sign and deliver the Agreement as required within fourteen (14) calendar days after such bidder has received the Notice of Low Bid Status, shall forfeit to the Owner as damages for such failure or refusal, the bid security or the difference between the bidder's Award Criteria Figure and the next lowest bidder's Award Criteria figure times the Estimated Annual Contract Volume, whichever sum shall be higher.

### **Section 16.0 - Contract Duration and Liquidated Damages**

- A. The duration of the Contract is:

1. Base Term: One (1) year from the issuance of a Notice of Contract Award.
2. Option Period: Both the Owner and the Contractor must mutually agree to extend the Contract for an option period. The Contract includes three (3) Option Periods, and each term of the Option Period is one (1) year.

- B. Work set forth in individual Job Orders under the Contract shall be commenced and completed as stated in the Job Orders.

- C. Liquidated Damages may be assessed on a Job Order by Job Order basis at a rate established in the Job Order.

### **Section 17.0 – Forms and Documents**

Each bidder shall complete and submit to the Owner, pursuant to provisions stated in the Information for Bidders, the following forms and documents, which are hereby made a part of the Contract Documents:

Bidding Requirements: each bidder shall submit the following at time of bid:

1. Form of Bid
2. Omnibus Procurement Certification
  - a. 2005 Procurement Lobbying Law - Certification
  - b. Code of Business Ethics - Certification
  - c. Compliance with Laws - Certification

BIDDING REQUIREMENTS for CONSTRUCTION  
JOB ORDER CONTRACTING  
INFORMATION FOR BIDDERS

3. W-9 Form
4. Bid Security

Contract Forms for Construction: the successful bidder shall submit the following for execution of the Contract:

1. Minimum Qualifications Form.
2. Required Insurance Form – within three (3) days after low bidder notification
3. New York State Vendor Responsibility Questionnaire For-Profit Construction (CCA-2)
4. Agreement - within fourteen (14) calendar days after Notice of Low Bid Status
5. Surety letter attesting to Bidder's overall and per project bonding limits.

As job orders are issued the successful bidder must submit the following:

1. Utilization Plan with written justification if a Request for Waiver is applicable Utilization Plan Cover Sheet
2. Scope Verification Form
3. Monthly Workforce Utilization Report

**Section 18.0 – Project Labor Agreement:**

The purpose of this is to notify prospective bidders that under certain conditions the successful Contractor awarded this Contract may be subject to the provisions set forth in the PLA. These conditions include:

- Any DASNY Project in the five (5) boroughs of New York City, or Nassau, Suffolk, Westchester, Rockland and Putnam counties where an economic evaluation or study of the Project was performed by a DASNY Consultant and that study confirmed that a PLA would provide a cost savings.
- The threshold for DASNY's PLA is \$3,000,000 in the five (5) boroughs of New York City, and \$1,500,000 in Nassau, Suffolk, and Westchester counties. However, notwithstanding the Estimated Annual Contract Volume, PLA Factors must be provided for any trade contract in Regions 1, 2, and 3. DASNY's PLA may be required on a per-project basis even if the contract value is less than the applicable threshold.

Therefore, in situations where the above applies, the Contractor must execute the PLA included, as a condition of approval of the Job Order and commencement of the Work. The Work undertaken in connection with the subject work order will be governed by, and subject to the conditions set forth in the PLA. In addition, in situations where the above applies, all subcontractors of every tier will be required to execute a Letter of Assent, included in the enclosed PLA, agreeing to be bound by the PLA.

For additional information on the DASNY NYC Project Labor Agreements (PLAs), go to the following DASNY Website: <http://www.dasny.org/PLAs/2013/NYC/index.php>

BIDDING REQUIREMENTS for CONSTRUCTION  
JOB ORDER CONTRACTING  
INFORMATION FOR BIDDERS

A. Included Projects:

The Dormitory Authority of the State of New York (“DASNY”) has determined that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages and any local history of labor unrest are best met by use of a Project Labor Agreement (“PLA”) on this Project. The successful low bidder as a condition of being awarded this contract must execute the PLA included in the Contract Documents following the Form of Bid. The Work undertaken in connection with this Project will be governed by, and subject to the conditions set forth in the PLA. All subcontractors of every tier will be required to execute a Letter of Assent, included in the enclosed PLA, agreeing to be bound by the PLA. The PLA has been approved by the Building and Construction Trades Department, AFL-CIO and executed by the Building and Construction Trades Council of Greater New York and Vicinity and its participating affiliated Local Unions.

B. Excluded Projects

The Dormitory Authority of the State of New York (the “Authority”) and the Building and Construction Trades Council of Greater New York and Vicinity (the “Council”) have entered into a Memorandum of Understanding (“MOU”) that requires the use of a Project Labor Agreement (“PLA”) on applicable covered projects within the City of New York. While this Project is considered an “Excluded Project”, under the MOU and therefore the use of a PLA is optional on this Project, the successful prime contractor performing work on this Project shall have the option to voluntarily execute the PLA. The purpose of section is to provide potential bidders of the Project with notice of this option, consistent with the provisions of the MOU. Execution of the applicable PLA following the Information for Bidders is not a requirement to perform work on this Project.

**Section 19.0 – Electronic Data Transfer**

Notwithstanding Section 2.02 (B) – Electronic Data Transfer, payment to the Contractor shall only be rendered electronically, unless payment by paper check is authorized in writing by the Owner. The Contractor further acknowledges and agrees that the Owner may withhold payments, if the Contractor 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.

**FORM OF BID – PLA ONLY****THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY)****JOB ORDER CONTRACTING (JOC) PROGRAM****(For bids that include Regions 1 – 3)**

Pursuant to and in compliance with the Owner's advertisement for bids and the Contract Documents relating hereto, the undersigned hereby offers to Provide all plant, labor, materials, supplies, equipment, and other facilities and things necessary or proper for, or incidental to, the Work as required by, and in strict accordance with, the applicable provisions of the \_\_\_\_\_ **(Enter Trade Work)** Contract Documents for Region No. \_\_\_\_\_ /CR No. \_\_\_\_\_ **(Enter the Region Number and CR Number; note one CR per bid form)**, including written changes thereto, and addenda issued by the Owner and sent to the undersigned or delivered to the bidder prior to the opening of bids, whether received by the undersigned or not, using the following Adjustment Factors:

**Firm's Legal Name:** \_\_\_\_\_

**Award Criteria Figure:** \_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**AWARD FORMULA**

The following Award Formula has been developed for the sole purpose of evaluating bids and awarding the Contract. Each bidder must complete the following Award Formula (Contract for Total of All Materials and Labor) and enter the Award Criteria Figure on the above "Award Criteria Figure" line.

**NON-PLA WORK**

Line 1. Normal Working Hours: Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

Line 2. Multiply Line 1 by .425

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)



Line 3. Other Than Normal Working Hours: Contractor shall perform tasks during other than normal working hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least 0.1000 greater than Normal Working Hours Adjustment Factor \*\***

Line 4. Multiply Line 3 by .075

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

### **ALL WORK**

Line 5. Non Pre-Priced Work: Contractor shall perform Non Pre-Priced Work multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be no less than 1.0500 and no greater than 1.2000 \*\***

Line 6. Multiply Line 5 by .03

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

### **PLA WORK**

Line 7. Day Shift, Monday to Friday (as defined by the PLA): Contractor shall perform tasks during standard work week hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

Line 8. Multiply Line 7 by .3995

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

Line 9. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Monday to Friday (as defined by the PLA): Contractor shall perform tasks during evening or night shift Monday to Friday hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least equal to or greater than Standard Work Week Hours Adjustment Factor \*\***

Line 10. Multiply Line 9 by .01762

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

Line 11. Day Shift Saturday or Sunday (as defined by the PLA): Contractor shall perform tasks during day shift Saturday, Sunday or Holiday hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least 0.2000 greater than Standard Work Week Hours Adjustment Factor \*\***

Line 12. Multiply Line 11 by .01762

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

Line 13. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Saturday or Sunday (as defined by the PLA): Contractor shall perform tasks during evening or night shift Saturday, Sunday or Holiday hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least equal to or greater than Day Shift Saturday, Sunday and Holiday Hours Adjustment Factor \*\***

Line 14. Multiply Line 13 by .01763

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

Line 15. Holidays (as defined by the PLA): Contractor shall perform tasks during Holiday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least equal to or greater than Day Shift Saturday, Sunday and Holiday Hours Adjustment Factor \*\***

Line 16. Multiply Line 15 by .01763

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**AWARD CRITERIA FIGURE**

Line 17. Award Criteria Figure: Sum of lines 2, 4, 6, 8, 10, 12, 14, and 16:

**Award Criteria Figure:** \_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**(Transfer Award Criteria Figure to Page 1 of this form)**

A contract will be awarded to the responsive and responsible bidder with the lowest Award Criteria Figure. Intermediate steps to calculate the Award Criteria Figure will not be rounded off for purposes of determining the low bidder. The Owner reserves the right to revise all arithmetic errors in calculations for correctness.

The bid may be withdrawn at any time prior to the scheduled time for the opening of bids or any authorized postponement thereof.

If the Letter of Intent is sent or delivered to the undersigned within sixty (60) days after the date of opening of the bids, or any time thereafter before the bid is withdrawn, the undersigned shall, within fourteen (14) days after the date of such Letter of Intent, execute and deliver an Agreement in the form included in the Contract Documents.

The undersigned hereby designates as the undersigned's office to which the Letter of Intent may be sent or delivered:

**Date of Bid Submission:** \_\_\_\_\_

**Officer Name (Print):** \_\_\_\_\_

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

**Signature of Officer:** \_\_\_\_\_

**Firm's Legal Name:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**PO Box #:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Taxpayer ID or Social Security Number:** \_\_\_\_\_

**Submit Bid to:**

**DASNY  
Attn: CONTRACTS UNIT – BID ENCLOSED  
515 Broadway  
Albany, New York 12207**

**NOTE ON OUTSIDE OF ENVELOPE: FOR TRADE: \_\_\_\_\_; REGION: \_\_\_\_\_; CR No. \_\_\_\_\_**

(Fill-in Appropriate Trade, Region, and CR Number)

***No more than ONE Bid per envelope***

**FORM OF BID – Non-PLA**

**THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY)**

**JOB ORDER CONTRACTING (JOC) PROGRAM**

**(For bids that include Regions 4 – 10)**

Pursuant to and in compliance with the Owner's advertisement for bids and the Contract Documents relating hereto, the undersigned hereby offers to Provide all plant, labor, materials, supplies, equipment, and other facilities and things necessary or proper for, or incidental to, the Work as required by, and in strict accordance with, the applicable provisions of the \_\_\_\_\_ **(Enter Trade Work)** Contract Documents for Region No. \_\_\_\_\_ /CR No. \_\_\_\_\_ **(Enter Region Number and CR Number; note one CR per bid form)**, including written changes thereto, and addenda issued by the Owner and sent to the undersigned or delivered to the bidder prior to the opening of bids, whether received by the undersigned or not, using the following Adjustment Factors:

**Firm's Legal Name:** \_\_\_\_\_

**Award Criteria Figure:** \_\_\_\_\_  
(Specify to four decimal places)

**AWARD FORMULA**

The following Award Formula has been developed for the sole purpose of evaluating bids and awarding the Contract. Each bidder must complete the following Award Formula (Contract for Total of All Materials and Labor) and enter the Award Criteria Figure on the above "Award Criteria Figure" line.

**WORK**

Line 1. Normal Working Hours: Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_  
(Specify to four decimal places)

Line 2. Multiply Line 1 by .85

\_\_\_\_\_  
(Specify to four decimal places)

Line 3. Other Than Normal Working Hours: Contractor shall perform tasks during other than normal working hours for the unit price set forth in the Construction Task Catalogs® (CTC) multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be at least 0.1000 greater than Normal Working Hours Adjustment Factor \*\***

Line 4. Multiply Line 3 by .12

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

### **ALL WORK**

Line 5. Non Pre-Priced Work: Contractor shall perform Non Pre-Priced Work multiplied by the adjustment factor of:

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**\*\* NOTE: Must be no less than 1.0500 and no greater than 1.2000 \*\***

Line 6. Multiply Line 5 by .03

\_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

### **AWARD CRITERIA FIGURE**

Line 7. Award Criteria Figure: Sum of lines 2, 4, and 6:

**Award Criteria Figure:** \_\_\_\_\_. \_\_\_\_\_  
(Specify to four decimal places)

**(Transfer Award Criteria Figure to Page 1 of this form)**

A contract will be awarded to the responsive and responsible bidder with the lowest Award Criteria Figure. Intermediate steps to calculate the Award Criteria Figure will not be rounded off for purposes of determining the low bidder. The Owner reserves the right to revise all arithmetic errors in calculations for correctness.

The bid may be withdrawn at any time prior to the scheduled time for the opening of bids or any authorized postponement thereof.

If the Letter of Intent is sent or delivered to the undersigned within sixty (60) days after the date of opening of the bids, or any time thereafter before the bid is withdrawn, the undersigned shall, within fourteen (14) days after the date of such Letter of Intent, execute and deliver an Agreement in the form included in the Contract Documents.

The undersigned hereby designates as the undersigned's office to which the Letter of Intent may be sent or delivered:

Date of Bid Submission: \_\_\_\_\_

Officer Name (Print): \_\_\_\_\_

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

Signature of Officer: \_\_\_\_\_

Firm's Legal Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

PO Box #: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Taxpayer ID or Social Security Number: \_\_\_\_\_

Submit Bid to:

DASNY  
Attn: CONTRACTS UNIT – BID ENCLOSED  
515 Broadway  
Albany, New York 12207

**NOTE ON OUTSIDE OF ENVELOPE:** FOR TRADE: \_\_\_\_\_; REGION: \_\_\_\_\_; CR No. \_\_\_\_\_

(Fill-in Appropriate Trade, Region, and CR Number)

***No more than ONE Bid per envelope***

DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

I, the undersigned, an authorized signatory of \_\_\_\_\_, (the “**Firm**”) hereby represent that they are knowledgeable about the Firm’s business and operations and certify to the Dormitory Authority of the State of New York (“**DASNY**”) under penalty of perjury that the answers provided herein are true to the best of their knowledge and belief as follows with respect to certain actions taken and to be taken in connection with the Firm’s submission of a [bid/proposal] and the execution of any resulting contract (the “**Contract**”) in response to DASNY’s [notice to bidders/request for proposal] for Project # [ ] as follows:

**A. Non-Collusive Bidding Certification**

1. The prices in the [bid/proposal], have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other [bidder/proposer] or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in the [bid/proposal] have not been knowingly disclosed by the [bidder/proposer] and will not knowingly be disclosed by the [bidder/proposer] prior to opening, directly or indirectly, to any other [bidder/proposer] or to any competitor; and
3. No attempt has been made or will be made by the [bidder/proposer] to induce any other person, partnership, or corporation to submit or not to submit a [bid/proposal] for the purpose of restricting competition.

**B. Non-Segregated Facilities**

The Firm does not, nor shall not, maintain or provide for the employees of such Firm any segregated facilities at any establishments, and that the Firm does not, nor shall not, permit the employees of such Firm to perform the services of such employees at any location under the control of such Firm where segregated facilities are maintained. The Firm agrees that a breach of this certification is a violation of the nondiscrimination clauses of the Contract.

**C. Non-discrimination in Employment in Northern Ireland**

The Firm stipulates that it, and any individual or legal entity in which the Firm holds a ten percent (10%) or greater ownership interest, and any such entity that holds such an interest in the Firm, either:

1. Has no business operations in Northern Ireland; or
2. Shall take all lawful steps in good faith to conduct any business operations it has or in which it has such an interest in Northern Ireland in accordance with the MacBride Fair Employment Principles as set forth in Chapter 807 of the Laws of 1992 and shall permit any independent monitoring of its compliance with said Principles.

**D. Federal Equal Employment Opportunity Act**



DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

The Firm is compliant with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

**E. Commitment to Opportunity Programs**

The Firm acknowledges and agrees to be bound in accordance with NYS Executive Law Article 15-A, and in conformance with regulations promulgated by the Division of Minority and Women's Business Development of the NYS Department of Economic Development. A list of NYS certified M/WBEs may be obtained from the ESDC directory of certified businesses located at [www.nylovesmwbe.ny.gov](http://www.nylovesmwbe.ny.gov).

**F. Commitment to Service-Disabled Veteran-Owned Business**

The Firm acknowledges and agrees to be bound in accordance with NYS Executive Law Article 17-B, and in conformance with applicable regulations. A list of NYS certified SDVOB may be obtained from the NYS Office of General Services Division of Services-Disabled Veterans' Business Development located at <https://ogs.ny.gov/veterans>.

**G. Transfer of Offset Credits**

The Firm acknowledges notice that DASNY may assign or otherwise transfer offset credits created by the Contract to third parties located in New York State.

**H. 2005 Procurement Lobbying Law**

1. The Firm understands and has to date and agrees hereinafter to comply with DASNY's procedures relative to permissible contacts for this procurement as required by State Finance Law § 139-j (3) and § 139-k (6) (b);
2. No "governmental entity," as defined in State Finance Law § 139-j and § 139-k has made a finding in the last four years that the Firm was not responsible;
  - a. If yes, please note the governmental entity, the date of the finding and the basis of the finding regarding each finding of non-responsibility. Attach additional pages, if necessary.

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DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

3. No “governmental entity” as defined in State Finance Law § 139-j and § 139-k has terminated or withheld a procurement contract with the Firm due to the intentional provision of false or incomplete information required by such laws and/or the failure to comply with the requirements of State Finance Law § 139-k(3) relating to permissible contacts.

- a. If yes, please note the governmental entity, the date of the termination or withholding of contract and the basis of termination or withholding of contract. Attach additional pages, if necessary.

**I. Code of Business Ethics**

The Firm acknowledges notice of and has read DASNY’s Code of Business Ethics attached as **Exhibit A** hereto and acknowledges that the Firm’s failure to comply shall justify termination of the Contract by DASNY and may result in the rejection of the Firm’s [bid/proposal] for future work with DASNY.

**J. Iran Divestment**

That to the best of its knowledge and belief, the Firm and each person and each person signing on behalf of any other party, that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

**K. Russia Divestment – EO 16**

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The Executive Order remains in effect while sanctions imposed by the federal government are in effect. As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

That to the best of its knowledge and belief, the Firm and each person and each person signing on behalf of any other party, represents as follows:

\_\_\_\_\_ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.

\_\_\_\_\_ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)

\_\_\_\_\_ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)

\_\_\_\_\_ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive

**L. Certification**

The Firm acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001 and hereby represents that all information contained here provided to DASNY is complete, true and accurate.

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

**Exhibit A: Dormitory Authority of the State of New York - Code of Business Ethics**

**A. Ethics Programs**

1. DASNY is a public-benefit corporation of the State of New York and expects the highest degree of ethical business conduct by its employees and the many contractors, consultants and vendors with whom it interacts on behalf of its clients, bondholders and the people of the State of New York. DASNY, by mandate of its Board of Directors, administers a comprehensive corporate integrity program to ensure that, as public officers, DASNY employees at all levels perform their official duties consistent with the requirements of the *New York State Public Officers Law*; other applicable laws, rules, and regulations; and policies of DASNY.
2. DASNY encourages and supports a fair, open and honest business relationship with its contractors, consultants and vendors based on quality, service and cost. Moreover, DASNY believes that a “level playing field” in the marketplace can only be achieved through adherence to ethical business practices by all participants involved in the process.
3. To promote a working relationship with DASNY based on ethical business practices, contractors, consultants and vendors are expected to:
  - a. furnish all goods, materials and services to DASNY as contractually required and specified;
  - b. submit complete and accurate reports to DASNY and its representatives as required;
  - c. not seek, solicit, demand or accept any information, verbal or written, from DASNY or its representatives that provides an unfair advantage over a competitor;
  - d. not engage in any activity or course of conduct that restricts open and fair competition on Authority-related projects and transactions;
  - e. not engage in any course of conduct with DASNY employees or representatives that constitutes a conflict of interest or creates the appearance of a conflict of interest;
  - f. not offer any unlawful gifts or gratuities to DASNY employees or representatives, or engage in bribery or other criminal activity; and
  - g. report to DASNY any activity by an DASNY employee or contractor, consultant or vendor of DASNY that is inconsistent with DASNY’s *Code of Business Ethics*.
4. DASNY encourages its contractors, consultants and vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial stability, DASNY will consider the *corporate integrity* of all contractors, consultants and vendors prior to the awarding of contracts or issuing of purchase orders.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

**B. Conduct of DASNY Employees**

DASNY employees are expected to conduct business with contractors, consultants and vendors in a fair, consistent and professional manner. DASNY's Code of Business Ethics and Employee Conduct entitled *Serving Responsibly*, and other DASNY policies and procedures, guide the manner in which DASNY employees are required to interact with contractors, consultants and vendors. Additionally, the New York State Public Officers Law sets forth legal parameters within which DASNY employees must perform their official duties with respect to, among other things, conflicts of interest and the acceptance of gifts.

**Limits on Gifts to DASNY Employees**

1. Pursuant to Section 73(5) of the Public Officers Law, no person shall offer any gift having more than a nominal value to an DASNY employee under circumstances in which it:
  - a. could be reasonably inferred the gift was intended to influence the employee in the performance of his or her official duties;; or
  - b. could reasonably be expected to influence the employee in the performance of his or her official duties;; or
  - c. was intended as a reward for any official action on the part of the employee.
2. A gift is anything more than nominal in value, in any form, given to an DASNY employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise. Any firm or its agents, either doing business or seeking to do business with DASNY (contractors, consultants, vendors, etc.), is prohibited from directly or indirectly offering or giving any gifts, even gifts of nominal value, to DASNY employees as such gifts are deemed to be *per se* improper.
3. As is stated in the *Prohibited Interests* section of the Construction and Consultant Contract documents, violations of these gift provisions may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

**C. Employing Relatives of DASNY Employees**

Although contractors, consultants and vendors may employ relatives of DASNY employees, DASNY must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. DASNY reserves the right to request that contractors, consultants and vendors modify the work assignment of an DASNY employee's relative where a conflict of interest, or the appearance thereof, is deemed to exist. Please be advised that DASNY employees are required to disclose information regarding the hiring of relatives by contractors, consultants and vendors and recuse themselves from matters that may present a conflict of interest. For purposes of this document, the term "relatives" refers to spouses, domestic partners, parents, children, sisters, brothers, sisters-in-law, brothers-in-law, parents-in-law, sons/daughters-in-law, stepparents, stepchildren, aunts, uncles, nieces, nephews, first cousins, grandparents by blood relationship or by marriage, or persons residing in the same household.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
OMNIBUS PROCUREMENT  
CERTIFICATION

**Hiring Former DASNY Employees**

Contractors, consultants and vendors may hire former DASNY employees. However, as a general rule, former employees of DASNY may neither appear nor practice before DASNY, nor receive compensation for services rendered on a matter before DASNY, for a period of *two years* following their separation from DASNY service. In addition, former DASNY employees are subject to a “*lifetime bar*” from appearing before DASNY or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with DASNY. Violations will be referred to the New York State Commission on Public Integrity for appropriate action.



## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership  
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ -----  
☐ Other (see instructions) ▶

☐ Exempt  
payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign  
Here

Signature of  
U.S. person ▶

Date ▶

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.



Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.



**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>3</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

KNOW ALL PERSONS BY THESE PRESENTS, that we:

\_\_\_\_\_ as Principal,  
(Legal Title of the Bidder)

and \_\_\_\_\_ as Surety,  
(Legal Title of the Surety)

are hereby held and firmly bound unto the Dormitory Authority - State of New York in the penal sum of:

\_\_\_\_\_,  
(Amount)

{write in the amount as required from Information to Bidders ie., Fifty Thousand Dollars (\$50,000)/Twentyfive Thousand Dollars (\$25,000)}, or in the full and just sum of difference between the bidder's Award Criteria Figure and the next lowest bidder's Award Criteria Figure times the Estimated Annual Contract Volume whichever sum shall be lower, for the payment of which, well and turly to be made, we herby jointly and severally bind ourselves, heirs, executors, administrators, successors, and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Whereas the Principal has submitted to the Dormitory Authority - State of New York a certain bid, made a part hereof, to enter into a Contract in writing for the:

\_\_\_\_\_  
(Title of Project)

NOW, THEREFORE the conditions of this obligation is such that::

A. This obligation shall be void:

1. If said bid shall be rejected or in the alternate.
2. If said bid shall be accepted and the Principal shall execute and deliver the Agreement in the form attached hereto (properly completed; in accordance with said bid) and shall furnish bonds for the faithful performance of said Contract by the Principal, and for the payment of persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the Contract created by the acceptance of said bid.

Otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

- B. The penal sum of this Bond is in addition to any other Bond furnished by the Contractor and in no way shall be impaired or affected by any other Bond.
- C. The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and said Surety's Bond in no way shall be impaired or affected by any extension of time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF:

the parties hereto have executed this Bond the day and year first above written.

IN THE PRESENCE OF:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Email Address)

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND  
IF A CORPORATION

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_,  
to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_  
(street, city, state, zip code)

that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by  
authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary PublicACKNOWLEDGEMENT OF CONTRACTOR EXECUTING BID BOND  
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said  
State, personally appeared \_\_\_\_\_, personally known 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.

\_\_\_\_\_  
Notary Public

## ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally came \_\_\_\_\_,  
to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_  
(street, city, state, zip code)

that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the  
corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by  
authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

DASNY 2024-2028 PLA

Attachment A

**PROJECT LABOR AGREEMENT**

**BETWEEN**

**CONSTRUCTION MANAGER OR GENERAL CONTRACTOR**

**AND**

**NEW YORK CITY BUILDING AND CONSTRUCTION TRADES  
COUNCIL**

**AND**

**SIGNATORY LOCAL UNIONS**

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**ARTICLE 1 - PREAMBLE**

WHEREAS, the Dormitory Authority of the State of New York (“DASNY”), as a Project Manager for its construction client, [ ] (“Client”), has an agreement with [ ] (“CONSTRUCTION MANAGER OR GENERAL CONTRACTOR”) to perform construction services at [ ] (“Project”) and DASNY and its CONSTRUCTION MANAGER OR GENERAL CONTRACTOR desire to provide for the cost efficient, safe, quality, and timely completion of certain construction, as defined in Article 3, in a manner designed to afford the lowest costs to the Client, DASNY and the public they represent, and the advancement of permissible statutory objectives;

WHEREAS, this Project Labor Agreement will foster the achievement of these goals, *inter alia*, by:

(1) providing a mechanism for responding to the unique construction needs associated with this Project Work and achieving the most cost-effective means of construction, including direct labor cost savings, and modifying other work and pay practices which would otherwise apply to Project Work;

(2) expediting the construction process and otherwise minimizing the disruption to the ongoing operations of the construction Client in the project area;

(3) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes, reducing jobsite friction on common situs worksites, and promoting labor harmony for the duration of the Project Work;

(4) standardizing the terms and conditions governing the employment of labor on the Project Work;

(5) permitting wide flexibility in work scheduling;

(6) permitting adjustments to work rules and staffing requirements from those which otherwise might obtain;

(7) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;

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- (8) ensuring a reliable source of skilled and experienced labor;
- (9) securing applicable New York State Labor Law exemptions;
- (10) promoting the statutory objectives stated in D A S N Y 's enabling legislation, applicable Executive Orders, and DASNY resolutions, in a non-discriminatory manner designed to open construction opportunities to all qualified bidders;
- (11) complying with the goals established under Articles 15-a and 17-b of the Executive Law for the Project Work for fostering increased participation by Minority and Women-owned Business Enterprises ("MWBES") and Service-Disabled Veterans-Owned Businesses ("SDVOBs"), respectively;
- (12) furthering public policy objectives as to improved employment opportunities for minorities, women, service-disabled veterans-owned businesses and the economically disadvantaged, in connection with the Project Work, including but not limited to consideration and implementation where appropriate of any approved Mentor-Protégé program established hereafter by D A S N Y pursuant to Section 147 of the State Finance Law, as amended by Chapter 360 of the 2009 Laws of the State of New York;
- (13) increasing apprenticeship levels for minorities, women and economically disadvantaged individuals to the fullest extent allowed by law; and
- (14) permitting contractors and subcontractors working on the Project Work to retain a percentage of their "core" employees.

WHEREAS, the Building and Construction Trades Council of Greater New York and Vicinity, its participating affiliated Local Unions and their members, desire to assist D A S N Y and its CONSTRUCTION MANAGER OR GENERAL CONTRACTOR in meeting these operational needs and objectives as well as to provide for stability, security and work opportunities which are afforded by this Project Labor Agreement; and

WHEREAS, the Parties desire to maximize Project Work safety conditions for both workers and the community in the project area.

NOW, THEREFORE, the Parties enter into this Agreement:

### **SECTION 1. PARTIES TO THE AGREEMENT**

This is a Project Labor Agreement ("Agreement") entered into by CONSTRUCTION

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MANAGER OR GENERAL CONTRACTOR, and its successors and assigns, in its capacity as construction manager or general contractor for the Project Work, and the Building and Construction Trades Council of Greater New York and Vicinity ("BCTC" or "Council") and the signatory affiliated Local Unions ("Unions" or "Local Unions"). The Parties each hereby warrant and represent that they have been duly authorized to enter into this Agreement.

### **ARTICLE 2 - GENERAL CONDITIONS**

#### **SECTION 1. DEFINITIONS**

Throughout this Agreement, the various Union parties including the Building and Construction Trades Council of Greater New York and Vicinity and its participating affiliated Local Unions, are referred to singularly and collectively as "Union(s)" or "Local Unions"; the term "Contractor(s)" shall include any Construction Manager engaged by DASNY that engages Prime Contractors, General Contractor, Prime Contractor, and all other contractors, and subcontractors of all tiers engaged in Project Work within the scope of this Agreement as defined in Article 3; the "Dormitory Authority of the State of New York is referred to as "DASNY"; the Building and Construction Trades Council of Greater New York and Vicinity is referred to as the "BCTC" or "Council;" the work covered by this Agreement (as defined in Article 3) is referred to as "Project Work;" and "Local community residents" shall mean residents of the zip codes as set forth in the contract between DASNY and the General Contractor or Construction Manager for the Project.

#### **SECTION 2. CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE**

This Agreement shall not become effective unless each of the following conditions are met: (1) The Agreement is approved by the Building and Construction Trades Department, AFL-CIO; (2) the Agreement is approved and executed by an authorized officer of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR; and (3) the Agreement is

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executed by the Council, as well as the participating affiliated Local Unions.

### **SECTION 3. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT**

This Agreement shall be binding on all participating Unions and their affiliates, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and all Contractors of all tiers performing Project Work, as defined in Article 3. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall include in any contract or subcontract that they let for performance during the term of this Agreement a requirement that their contractors and subcontractors, of all tiers, become signatory and bound by this Agreement with respect to that contracted or subcontracted work falling within the scope of Article 3, and all Contractors (including subcontractors) performing Project Work shall be required to sign a "Letter of Assent" in the form annexed hereto as Exhibit "A." This Agreement shall be administered by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or such other designee as may be named by the Authority, on behalf of all Contractors.

### **SECTION 4. SUPREMACY CLAUSE**

This Agreement, together with the local Collective Bargaining Agreements (each a "CBA"), appended hereto as Schedule "A", represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to this Project Work, in whole or in part, except that Project Work which falls within the jurisdiction of the Operating Engineers Locals 14 and 15 will be performed under the terms and conditions set out in the Schedule "A" agreements of Operating Engineers Locals 14 and 15, respectively. The CBAs of the affiliated local unions that cover a particular type of construction work as set forth in the Schedule "A" shall be deemed the Schedule "A" CBAs under this Agreement.

Subject to the foregoing, where a subject covered by the provisions of this Agreement is

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also covered by a Schedule A CBA, the provisions of this Agreement shall prevail. It is further understood that no Contractor shall be required to sign any other agreement as a condition of performing Project Work. No practice, understanding or agreement between a Contractor and a Local Union that is not set forth in this Agreement shall be binding with respect to the Project unless endorsed in writing by DASNY. Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the Project Work. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing Project Work.

It is further agreed that where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for any work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking which shall be performed under the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of the dispute resolution mechanisms and no strike clause contained herein, which shall govern all Project Work.

### **SECTION 5. LIABILITY**

The liability of any Party under this Agreement shall be several and not joint. No Contractor shall be liable for any violations of this Agreement by any other Contractor; and the Council and Local Unions shall not be liable for any violations of this Agreement by any other Union.

**SECTION 6. DASNY AND THE CONSTRUCTION MANAGER OR GENERAL CONTRACTOR**

DASNY and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR each shall require in its bid specifications for all Project Work within the scope of Article 3 that all successful bidders, and their subcontractors of all tiers, become bound by, and signatory to, this Agreement by execution of the Letter of Assent. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall not be liable for any violation of this Agreement by any Contractor. DASNY shall not be liable for any violation of this Agreement by any Contractor. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of DASNY and of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR in determining which Contractors shall be awarded contracts for Project Work. It is further understood that DASNY has sole discretion at any time to terminate, delay or suspend the Project Work, in whole or part, provided that in the event the Project Work is resumed it shall be governed by this Agreement.

**SECTION 7. AVAILABILITY AND APPLICABILITY TO ALL SUCCESSFUL BIDDERS**

The Unions agree that this Agreement will be made available to, and will fully apply to, any successful bidder for (or subcontractor of) Project Work who becomes signatory thereto, without regard to whether that successful bidder (or subcontractor) performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder (or subcontractor) are, or are not, members of any unions. This Agreement shall not apply to the work of any Contractor which is performed at any location other than the site of Project Work.

**SECTION 8. SUBCONTRACTING**

Contractors will subcontract Project Work only to a person, firm or corporation who is or

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agrees to become party to this Agreement.

### **SECTION 9. LOCAL COLLECTIVE BARGAINING AGREEMENTS**

Each Local Union agrees to provide D A S N Y and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR with a complete copy of its local CBA(s) listed on Schedule "A" within ten business days of its receipt of a request from DASNY or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or as soon thereafter as practical.

## **ARTICLE 3-SCOPE OF THE AGREEMENT**

### **SECTION 1. THE WORK**

Project Work shall include all construction contracts for the Project bid and let by DASNY, or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR. Such work shall mean any and all contracts that predominately involve the construction, renovation, repair, alteration, rehabilitation, or expansion of any temporary or permanent building, facility, or structure that DASNY is engaged to perform. This work will include, but not be limited to, demolition, site work, asbestos and lead abatement, painting services, carpentry services, and carpet removal and installation, to the extent incidental to such construction, renovation, or rehabilitation. Project Work does not include and this PLA shall not apply to : (i) work valued at \$100,000 or less, of an architect or engineer or a subcontractor of an architect or engineer to explore existing conditions prior to completion of bid documents for covered work; or (ii) contracts for work performed in connection with any and all mentor protégé programs established pursuant to New York State Executive Law Articles 15-A or 17-b involving minority, women or service-disabled veterans-owned business contractors, provided such contracts have a value of three million dollars (\$3,000,000.00) or less; except to the extent that a mentor contractor not



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otherwise bound to a Schedule “A” CBA chooses, on a job-by-job basis, to work under the terms of the PLA. No construction work within the craft jurisdiction of any affiliated local union shall be excluded unless specifically set forth in this Agreement. Project Work shall also include JOCS contracts and requirement contracts.

### **SECTION 2. TIME LIMITATIONS**

In addition to falling within the scope of Article 3, Section 1, to be covered by this Agreement, Project Work must be (1) advertised and let for bid after January 1, 2024, and (2) let for bid prior to December 31, 2028, the expiration date of this Agreement. It is understood that this Agreement, together with all of its provisions, shall remain in effect for all such Project Work until completion, even if not completed by the expiration date of the Agreement. If Project Work otherwise falling within the scope of Article 3, Section 1 is not let for bid by the expiration date of this Agreement, this Agreement may be extended to that work by mutual agreement of the parties.

### **SECTION 3. EXCLUDED EMPLOYEES**

The following persons are not subject to the provisions of this Agreement, even though performing Project Work:

A. Superintendents, supervisors, engineers, professional engineers and/or licensed architects engaged in inspection and testing, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons, provided, however, that general forepersons, forepersons and field surveyors covered by a craft’s Schedule “A” Agreement are included employees;

B. Employees of D A S N Y , State of New York (“State”), or any other municipal or State Authority, agency or entity, or employees of any other public employer, even though

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performing other work on the Project site while covered Project Work is underway;

C. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery or involved in deliveries to and from the Project site, except to the extent they are lawfully included in the bargaining unit of a Schedule “A” CBA;

D. Employees of the Construction Manager (except those employees of the Construction Manager performing manual, on-site construction labor will be covered by this Agreement);

E. Employees engaged in on-site equipment warranty work unless employees affiliated with the signatory unions are certified to perform warranty work;

F. Employees engaged in geophysical testing other than boring for core samples;

G. Employees engaged in laboratory, specialty testing, or inspections, pursuant to a professional services agreement with DASNY or its Client, or any of DASNY’s other professional consultants; and

H. Employees engaged in on-site maintenance of installed equipment or systems which maintenance is awarded as part of a contract that includes Project Work, but which maintenance occurs after installation of such equipment or system and is not directly related to construction services.

I. Employees engaged in work which is ancillary to Project Work, including work performed pursuant to contracts with electric utilities, gas utilities, telephone companies, and railroads, except that it is understood these entities and their employees may only install their work to a pre-determined demarcation point, e.g., a telephone closet or utility vault, the location of which is determined prior to construction. Employees of such entities shall not be used

to replace or displace employees represented by the affiliated local unions on Project Work.

#### **SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES**

This Agreement shall not apply to those parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor which do not perform Project Work. It is agreed that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among DASNY, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, or any Contractor. The Agreement shall further not apply to New York State, or State Authority, or entity other than D A S N Y and nothing contained herein shall be construed to prohibit or restrict D A S N Y or its employees, or any State, City or other municipal or State entity and its employees, from performing on or off-site work related to the Project Work.

As the contracts involving Project Work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned in writing (copy to Local Union involved) by the Authority or CONSTRUCTION MANAGER OR GENERAL CONTRACTOR for performance under the terms of this Agreement.

### **ARTICLE 4 - UNION RECOGNITION AND EMPLOYMENT**

#### **SECTION 1. PRE-HIRE RECOGNITION**

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all employees who are performing on-site Project Work, with respect to that work.

#### **SECTION 2. UNION REFERRAL**

A. The Contractors agree to utilize, employ and hire craft employees for Project Work covered by this Agreement through the job referral systems and hiring halls

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established in the Local Unions' area CBAs. Contractors and subcontractors unfamiliar with the union referral systems and hiring halls may initiate contact with the appropriate trade(s) pursuant to the trade contact list annexed hereto as Exhibit "1". Notwithstanding this, Contractors shall have the sole right to determine the competency of all referrals; to determine the number of employees required; to select employees for layoff (subject to Article 5, Section 3); and the sole right to reject applicants for cause referred by a Local Union, subject to the show-up payments. In the event, that a Local Union is unable to fill any request for qualified employees within a 48-hour period after such requisition is made by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants from any other available source. In the event, that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of craft employees hired for Project Work within its jurisdiction from any source other than referral by the Union.

B. A Contractor, not signatory to any Schedule "A" CBAs, may request by name, its core employee(s) and the Local will honor, referral of persons who have applied to the Local for Project Work and who meet the following qualifications:

- (1) possess any license required by New York State law for the Project Work to be performed;
- (2) have worked a total of at least 1000 hours in the construction field during the prior 3 years; and
- (3) were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award.

No more than twelve per centum (12%) of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above. Under this provision, name referrals begin with the eighth employee needed and continue on that same

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basis.

C. A certified MWBE/SDVOB contractor not signatory to any Schedule “A” CBAs may request by name its core employee(s) that meet the following qualifications, in accordance with sub-paragraphs D (1) and (2) below.

- (1) possess any license required by New York State law for the Project Work to be performed;
- (2) have worked a total of at least 1000 hours in the construction field during the prior 3 years; and
- (3) were on the Contractor’s active payroll for at least 60 out of the 365 calendar days prior to the contract award.

D. Notwithstanding Section 2(B) above,

- 1) For prime contracts up to \$3,000,000, in any case where the first two or more employees are hired simultaneously, the certified MWBE/SDVOB’s core employees may be the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> selections. In any case where the first two or more employees are not hired simultaneously, the MWBE/SDVOB’s core employees may be the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> selections.
- 2) For subcontracts up to \$2,000,000 in any case where the first two or more employees are hired simultaneously, the certified MWBE/SDVOB’s core employees may be the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> selections. In any case where the first two or more employees are not hired simultaneously, the MWBE/SDVOB’s core employees may be the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> selections.

E. DASNY and/or the Construction Manager or General Contractor shall provide the BCTC and the Local Unions with a list of certified MWBE/SDVOB contractors.

F. Where a certified MWBE/SDVOB Contractor voluntarily enters into a CBA with a Local Union, the employees of such Contractor at the time the CBA is executed shall be allowed to join the Union for the applicable trade, subject to satisfying the Union’s basic

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standards of proficiency for admission.

G. The Parties recognize that the Project will require large numbers of craft personnel and other supporting workers. It is, therefore, the explicit understanding and intention of the Parties to use the opportunities provided by the length of the Project and the extensive amount of work to be covered by the Agreement to identify and promote, through cooperative efforts, programs, procedures, and ways to assist interested local residents in the surrounding communities of the Project, especially disadvantaged residents, in pursuing careers in the construction industry through apprenticeship programs. These efforts may include, for example, programs to prepare persons for entrance into formal apprenticeship programs such as pre-apprenticeship programs utilizing the Building and Construction Trades Council's Edward J. Malloy Initiative for Construction Skills, and any program that may be offered by DASNY or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and outreach programs to the community describing opportunities available as a result of the Project.

H. Upon requests of Contractors, the Local Unions that operate work referral systems will give preference to local community residents in their respective Local Unions for referral to work for Contractors performing Project Work, to the extent permitted by law. Each affiliate receiving such a request will process the request expeditiously and will refer local community residents, to the extent available, to the requesting Contractor. DASNY, its designee and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR may facilitate such referrals by, among other things, maintaining and regularly sharing with the Local Unions a local referral registry which may be utilized by DASNY, its designee and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR to refer qualified local community residents, provided, however, that nothing contained herein shall supersede any legal obligation of any Local Union arising by collective bargaining agreement or otherwise. The Labor Management

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Committee established under Article 8 may review any problem with requests under this paragraph or administrator action of the local referral registry, but such will not be a condition to a grievance under Article 9. All matters related to referral and hiring of local community residents may be submitted to and addressed by the Labor Management Committee provided for in Article 8 herein.

I. To the extent permitted by the local union referral systems, employees affiliated with a local union working for a certified MWBE/SDVOB Contractor under the terms of this Agreement may be requested by the certified MWBE/SDVOB non-union contractor by name to transfer with that contractor to any other job governed by this Agreement, or an Agreement substantially similar to this Agreement governing DASNY's work, consistent with the provisions of subparagraph D 1.) and 2.) of this Article.

### **SECTION 3. NON-DISCRIMINATION IN REFERRALS**

The Council represents that each Local Union hiring hall and referral system will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations that require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.

### **SECTION 4. MINORITY AND FEMALE REFERRALS**

In the event a Local Union either fails, or is unable to refer qualified minority, female or SDVOB applicants in percentages equaling the workforce participation goals adopted by DASNY and set forth in DASNY's bid specifications, within 48 hours of the request for

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same, the Contractor may employ qualified minority, female or SDVOB applicants from any other available source. The parties will cooperate and the Local Unions will use their best efforts to assist contractors to meet the DASNY workforce participation goals for minority, female and SDVOB workers for all crafts as set forth in the contract documents between DASNY and the CONSTRUCTION MANAGER or GENERAL CONTRACTOR.

### **SECTION 5. CROSS AND QUALIFIED REFERRALS**

The Local Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

### **SECTION 6. CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor except where otherwise provided by specific provisions of an applicable Schedule "A" CBA and provided that all craft forepersons shall be experienced and qualified journey persons in their trade as determined by the appropriate Local Union. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local CBA prohibits a foreperson from working when the craft-persons he is leading exceed a specified number.

## **ARTICLE 5- UNION REPRESENTATION**

### **SECTION 1. LOCAL UNION REPRESENTATIVE**

Each Local Union representing on-site employees shall be entitled to designate in writing (copy to Contractor involved and the CONSTRUCTION MANAGER OR GENERAL



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CONTRACTOR) one representative, and/or the Business Manager, who shall be afforded access to the Project Work site with a CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or Contractor provided escort but who shall not disrupt or interrupt the work of employees on the Project.

### SECTION 2. STEWARDS

A. Each Local Union shall have the sole discretion to select and designate any working journey person as a Steward and an alternate Steward. The Union shall notify the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR as well as the Contractor of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. All Stewards shall be working Stewards.

B. In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's trade and, if applicable, subcontractors of their Contractor, but not with the employees of any other trade Contractor. No Contractor shall discriminate against the Steward in the proper performance of Union duties.

C. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule "A" CBA provision providing procedures for the equitable distribution of overtime.

### SECTION 3. LAYOFF OF A STEWARD

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a Schedule "A" CBA provision, such provision shall be recognized to the extent the

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Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

### **ARTICLE 6- MANAGEMENT'S RIGHTS**

#### **SECTION 1. RESERVATION OF RIGHTS**

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their operations including, but not limited to, the right to: direct the work force, including determination as to the number of employees to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; require compliance with the directives of DASNY or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, including standard restrictions related to security and access to the site that are equally applicable to DASNY or CONSTRUCTION MANAGER OR GENERAL CONTRACTOR employees, guests, or vendors; or the discipline or discharge for just cause of its employees; assign and schedule work; promulgate reasonable Project Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices that limit or restrict productivity or efficiency of the individual as determined by the Contractor, DASNY and/or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall be permitted or observed.

#### **SECTION 2. MATERIALS, METHODS & EQUIPMENT**

There shall be no limitation or restriction upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices. Contractors

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may, without restriction, install or use materials, supplies or equipment regardless of their source; provided, however, that where there is a Schedule "A" CBA that includes a lawful union standards and practices clause, then such clause as set forth in Schedule "A" CBAs will be complied with, unless there is a lawful contract specification issued by DASNY in accordance with D A S N Y ' S Procurement Policy and Guidelines, for the Project that specifically limits or restricts the Contractor's choice of materials, techniques, methods, technology or design, or, requires the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices, and which would prevent compliance with such Schedule "A" CBA clause. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is performed off-site for Project Work.

### **ARTICLE 7- WORK STOPPAGES AND LOCKOUTS**

#### **SECTION 1. NO STRIKES-NO LOCK OUT**

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other similar disruptive activity at the Project Work site for any reason by any Union or employee against any Contractor or employer. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the operation of the Project Work, the objectives of DASNY and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR at any Project Work site or otherwise interferes with the operations of DASNY's construction Client. In addition, failure of any Union or employee to cross any picket line

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established by any Union, signatory or non-signatory to this Agreement, or the picket or demonstration line of any other organization, at or in immediate proximity to a Project Work site where the failure to cross disrupts or interferes with the operation of Project Work is a violation of this Article. Should any employees breach this provision, the Unions will use their best efforts to try to immediately end that breach and return all employees to work. There shall be no lockout at a Project Work site by any signatory Contractor, DASNY or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR. Contractors and Unions shall use their best efforts to ensure compliance with this Section 1 and to ensure uninterrupted construction and the free flow of traffic in the Project area for the duration of this Agreement.

### **SECTION 2. DISCHARGE FOR VIOLATION**

A Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

### **SECTION 3. NOTIFICATION**

If a Contractor contends that any Union has violated this Article, it will notify the Local Union involved advising of such fact, with copies of the notification to the Council. The Local Union shall instruct and order, the Council shall request, and each shall otherwise use their best efforts to cause, the employees (and where necessary the Council shall use its best efforts to cause the Local Union), to immediately cease and desist from any violation of this Article. If the Council complies with these obligations it shall not be liable for the unauthorized acts of a Local Union or its members. Similarly, a Local Union and its members will not be liable for any unauthorized acts of the Council. Failure of a Contractor or the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR to give any notification set forth in this Article shall not excuse any violation of Section 1 of this Article.

**SECTION 4. EXPEDITED ARBITRATION**

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity) that may be brought.

A. A party invoking this procedure shall notify Jack Tillem or J.J. Pierson, who shall alternate (beginning with Arbitrator Tillem) as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 24 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to the alleged violator and Council.

B. The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Council and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, hold a hearing within 48 hours of receipt of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice required by Section 3, above.

C. All notices pursuant to this Article may be provided by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor, CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and Local Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present

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or the issuance of an award by the Arbitrator.

D. The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages (any damages issue is reserved solely for court proceedings, if any.) The Award shall be issued in writing within 3 hours after the close of the hearing and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

E. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and DASNY may participate in full in all proceedings under this Article.

F. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union or Contractor involved, and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR.

G. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.

H. The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

**SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION**

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

**ARTICLE 8 - LABOR MANAGEMENT COMMITTEE**

**SECTION 1. SUBJECTS**

The Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations among the Contractors and Unions; 2) enhance safety awareness, cost effectiveness and productivity of construction operations; 3) protect the public interests; 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; 5) review efforts to meet applicable participation goals for MWBE/SDVOB's and workforce participation goals for minority and female employees; and 6) review the administration of the local referral registry, requests under Article 4, Section 2, paragraph G, and/or all matters related to the referral and hiring of local community residents.

**SECTION 2. COMPOSITION**

The Committee shall be jointly chaired by the President of DASNYD, or his designee, the President of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, or a designee, and the President of the Council, or his designee. It may include representatives of the Local Unions and Contractors involved in the issues being discussed. The parties may mutually designate an MWBE/SDVOB representative to participate in appropriate Committee discussions. The Committee may conduct business through mutually agreed upon sub-committees.

**ARTICLE 9- GRIEVANCE & ARBITRATION PROCEDURE**  
**SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES**

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure of the steps described below, provided, in all cases, that the question, dispute or claim arose during the term of this Agreement.

**Step 1:**

(a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union business representative or job steward give notice of the claimed violation to the work site representative of the involved Contractor and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR. To be timely, such notice of the grievance must be given within 7 calendar days after the act, occurrence or event giving rise to the grievance. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, employee and Contractor directly involved unless the settlement is accepted in writing by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, as creating a precedent.



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(b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article 7, Section 1) with any other signatory to this Agreement and, if after conferring, a settlement is not reached within 7 calendar days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

### **Step 2:**

The Business Manager or designee of the involved Local Union, together with representatives of the involved Contractor, Council and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR (or designee), shall meet in Step 2 within 7 calendar days of service of the written grievance to arrive at a satisfactory settlement.

### **Step 3:**

(a) If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within 21 calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants, including the Construction Manager or designee) to Jack Tillem or J.J. Pierson, who shall act, alternately (beginning with Arbitrator J.J. Pierson), as the Arbitrator under this procedure. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union and employees and the fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union.

(b) Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by written consent of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR (or designee), involved Contractor and involved Local Union at the particular step where the extension is

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agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

### **SECTION 2. LIMITATION AS TO RETROACTIVITY**

No arbitration decision or award may provide retroactivity of any kind exceeding 60 calendar days prior to the date of service of the written grievance on the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and the involved Contractor or Local Union.

### **SECTION 3. PARTICIPATION BY DASNY AND/OR CONSTRUCTION MANAGER OR GENERAL CONTRACTOR**

DASNY and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these Steps, including Step 3 arbitration.

## **ARTICLE 10 - JURISDICTIONAL DISPUTES**

### **SECTION 1. NO DISRUPTIONS**

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractor. No jurisdictional dispute shall excuse a violation of Article 7.

### **SECTION 2. ASSIGNMENT**

All Project Work assignments shall be made by the Contractor to unions affiliated with the BCTC consistent with the New York Plan for the Settlement of Jurisdictional Disputes ("New York Plan") and its Greenbook decisions, if any. Where there are no applicable Greenbook decisions, assignments shall be made in accordance with the provisions of the New York Plan and local industry practice. The New York Plan for the Settlement of Jurisdictional

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Disputes (“New York Plan”) shall apply to the settlement of all jurisdictional disputes involving all Project work. The New York Plan shall apply to any and all Contractors, subcontractors and unions performing Project work.

### **SECTION 3. NO INTERFERENCE WITH WORK**

There shall be no interference or interruption of any kind with the Project Work while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the Contractor until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award.

## **ARTICLE 11 - WAGES AND BENEFITS**

### **SECTION 1. CLASSIFICATION AND BASE HOURLY RATE**

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the base hourly wage and fringe benefit rates applicable to those classifications as specified in the attached Schedule “A” CBAs, as amended during the term of this Agreement.

### **SECTION 2. EMPLOYEE BENEFITS**

A. The Contractors agree to pay on a timely basis contributions on behalf of all employees covered by this Agreement to those legally established jointly trustee employee benefit funds designated in Schedule “A” (in the appropriate Schedule “A” amounts), provided that such benefits are required to be paid on public works under any applicable prevailing wage law. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly required under applicable prevailing wage law. Contractors, not otherwise contractually bound to do so, shall not be

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required to contribute to benefits, trusts or plans of any kind that are not required by the prevailing wage law, provided, however, that this provision does not relieve Contractors signatory to local collective bargaining agreement with any affiliated union from complying with the fringe benefit requirements for all funds contained in the CBA.

B. The Contractors agree to be bound by the written terms of the legally established jointly trustee Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Project Work done under this Agreement and only for those employees to whom this Agreement requires such benefit payments. Core employees that may remain unaffiliated with any local union at the completion of their employment under the terms of this PLA may apply for any distributions to which they may be entitled from the Funds that they have participated under the terms of this agreement. Any such distributions will be fully compliant with ERISA and the rules of the relevant Trust Fund. Each Local Union agrees to provide D A S N Y and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR with a complete copy of the governing documents for each Trust Fund within ten (10) business days of a request for such documents.

C. In consideration of the Unions' waiver of their rights to withhold labor from a contractor or subcontractor delinquent in the payment of fringe benefits contributions ("Delinquent Contractor"), any such Union and/or fringe benefit fund shall notify DASNY, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and the Delinquent Contractor in writing with back-up documentation that the Delinquent Contractor has failed to make fringe benefit contributions to it as provided herein. Should the Delinquent Contractor fail, within ten (10) calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the Union and/or fringe benefit fund is in dispute, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR shall withhold from amounts

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then or thereafter becoming due and payable to the Delinquent Contractor an amount equal to that portion of such payment due to the Delinquent Contractor that relates solely to the work performed by the Delinquent Contractor which the Union or fringe benefit fund claims to be due it and shall remit the amount when and so withheld to the fringe benefit fund and deduct such payment from the amounts then otherwise due and payable to the Delinquent Contractor, which payment shall, as between the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and the Delinquent Contractor, be deemed a payment by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR to the Delinquent Contractor. The Union or its employee benefit fund funds shall include in such notification only such amount it asserts the Delinquent Contractor failed to pay on Project Work and the Union or its employee benefit funds may not include in its notification any amount such Delinquent Contractor may have failed to pay on any other project. In the event that a Union and/or its employee benefit funds notifies DASNY, CONSTRUCTION MANAGER OR GENERAL CONTRACTOR that a contractor is delinquent in fringe benefit contributions pursuant to this section, including where the Delinquent Contractor disputes that it owes the Union or fringe benefit funds the amount claimed to be owed, then such dispute shall be considered a claim within the meaning of Section 139-f (2) of the State Finance Law. Pursuant to Section 139(f) (2) of the State Finance Law, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or Prime Contractor is required to withhold from payment to the Delinquent Contractor the amount of the claim until the claim has been suitably discharged.

### **ARTICLE 12- HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS**

#### **SECTION 1. WORK WEEK AND WORKDAY**

A. The standard work week shall consist of 40 hours of work at straight time rates, Monday through Friday, 8 hours per day, plus ½ hour unpaid lunch period.

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B. In accordance with Project needs, there shall be flexible start times with advance notice from the Contractor to the Union. The Day Shift shall commence between the hours of 6:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 5:30 p.m. for an eight (8) hour day, and up to 7:30 p.m. for a ten (10) hour day. The Evening Shift shall commence between the hours of 3:00 p.m. and 6:00 p.m., unless different times are necessitated by DASNY'S or the CONSTRUCTION MANAGER'S OR GENERAL CONTRACTOR'S phasing plans on specific projects. The Night Shift shall commence between the hours of 11:00 and 2:00 a.m., unless different times are necessitated by the Authority's or the CONSTRUCTION MANAGER'S OR GENERAL CONTRACTOR'S phasing plans on specific projects. Subject to the foregoing, starting and quitting times shall occur at the Project Work site designated by the Contractor.

C. Notice - Contractors shall provide not less than 5 days prior notice to the Local Union involved as to the work week and work hour schedules to be worked or such lesser notice as may be mutually agreed upon.

D. **For Renovation and Rehabilitation Projects Only.** Notwithstanding any other provision of this Agreement, at the commencement of any renovation or rehabilitation project, and with DASNY's approval, a contractor may schedule at the commencement of the job, a four day work week, ten (10) hours per day, four consecutive days, Monday through Thursday at straight time rates.

## SECTION 2. OVERTIME

For new construction Project Work, overtime shall be paid for any work over eight (8) hours in a day and over forty (40) hours in a week Monday through Saturday and will be paid

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at time and one half (1 ½) All overtime work performed on Sunday and Holidays will be paid per Schedule "A" CBA. There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who shall be worked, including the use of employees, other than those who have worked the regular or scheduled work week, at straight time rates. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

For renovation and rehabilitation Project Work, overtime shall be paid for any work over eight (8) hours in a day where 5/8s is scheduled, or for work over ten (10) hours in a day where 4/10s is scheduled and over forty (40) hours in a week and will be paid at time and one half (1 ½) Monday through Saturday. All overtime work performed on Sunday and Holidays will be paid per Schedule "A" CBA. There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who shall be worked, including the use of employees, other than those who have worked the regular or scheduled work week, at straight time rates. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

### **SECTION 3. SHIFTS**

A. Flexible Schedules - Scheduling of on-site shift work, including Saturday and Sunday work, shall be within the discretion of the Contractor in order to meet Project Work schedules and existing Project Work conditions including the minimization of interference with the mission of the Authority's Client. It is not necessary to work a day shift in order to schedule

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a second or third shift, or a second shift in order to schedule a third shift, or to schedule all of the crafts when only certain crafts or employees are needed. Shifts must have prior approval of the Authority and must be scheduled for not less than five (5) consecutive workdays and with not less than five (5) workdays notice to the Local Union or such lesser notice as may be mutually agreed upon.

B. Second and/or Third Shifts/Saturday and/or Sunday Work - The second shift for onsite work shall start between 3 p.m. and 6 p.m. and the third shift shall start between 11 p.m. and 2 a.m., subject to different times necessitated by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or DASNY phasing plans on the project. There shall be no reduction in shift hour work. Shift work shall be paid in accordance with Schedule "A" CBA.

- **For Renovation and Rehabilitation Project Work Only.** With respect to second and third shift work, there shall be a five percent (5%) shift premium unless a Schedule "A" CBA provides for a lesser rate on shifts.

C. Flexible Starting Times - Shift starting times will be adjusted by the Contractor as necessary to fulfill Project Work requirements subject to the notice requirements of paragraph A.

### SECTION 4. HOLIDAYS

A. Schedule - There shall be nine (9) recognized holidays on the Project:

New Year's Day	Labor Day
Martin Luther King Day	President's Day
Memorial Day	Veteran's Day
Independence Day	Thanksgiving Day
Christmas Day	

All said holidays shall be observed on the calendar date except those holidays which



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occur on Sunday shall be observed on the following Monday.

B. Payment - Regular holiday pay, if any, for work performed on such a recognized holiday shall be in accordance with the applicable Schedule "A" CBA.

C. Exclusivity - No holidays other than those listed in Section 4(A) above shall be recognized or observed, provided however, it is agreed that Christmas Eve and New Year's Eve shall be observed pursuant to the Schedule "A" Agreements.

### **SECTION 5. SATURDAY WORK**

A. For new construction Project Work, the Contractor may schedule a Saturday work day and such time shall be scheduled and paid at time and one half (1 ½) unless the applicable Schedule "A" CBA permits a straight time rate.

B. **For Renovation and Rehabilitation Project Work Only**, where severe weather resulting in a state or local officially declared weather emergency, power failure, fire or natural disaster or other similar circumstances beyond the control of the Contractor, results in the loss of an entire work day on a regularly scheduled weekday, the Contractor may schedule a Saturday make-up day and such time shall be scheduled and paid as if performed on a weekday. Any other Saturday work shall be paid at time and one half (1 ½) unless the applicable Schedule "A" CBA permits a straight time rate. The Contractor shall notify the Local Union on the missed day or as soon thereafter as practical if such make-up day is to be worked.

### **SECTION 6. REPORTING PAY**

A. Employees who report to the work location pursuant to their regular schedule and who are not provided with work shall be paid two hours reporting pay at straight time rates. An employee whose work is terminated early by a Contractor due to severe weather, power failure,

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fire or natural disaster or for similar circumstances beyond the Contractor's control, shall receive pay only for such time as is actually worked. In other instances, in which an employee's work is terminated early (unless provided otherwise elsewhere in this Agreement), the employee shall be paid for his full shift.

B. When an employee, who has completed their scheduled shift and left the Project Work site, is "called out" to perform special work of a casual, incidental or irregular nature, the employee shall receive overtime pay at the rate of time and one-half of the employee's straight time rate for hours actually worked.

C. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 7 below, they shall be paid only for the actual time worked.

D. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty, high time or other special premium payments or reduction in shift hours of any kind.

E. There shall be no pay for time not actually worked except as specifically set forth in this Article and except where an applicable Schedule "A" CBA requires a full week's pay for forepersons.

### **SECTION 7. PAYMENT OF WAGES**

A. Termination- Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.

### **SECTION 8. EMERGENCY WORK SUSPENSION**

A Contractor may, if considered necessary for the protection of life and/or safety of employees or others, suspend all or a portion of Project Work. In such instances, employees

## DASNY 2024-2028 PLA

will be paid for actual time worked, except that when a Contractor requests that employees remain at the job site available for work, employees will be paid for that time at their hourly rate of pay.

### **SECTION 9. INJURY/DISABILITY**

An employee, who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties provided there is still Project Work available for which the employee is qualified and able to perform.

### **SECTION 10. TIME KEEPING**

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

### **SECTION 11. MEAL PERIOD**

A Contractor shall schedule an unpaid meal period of not more than ½-hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts, or which provides for staggered lunch periods within a craft or trade. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule "A".

### **SECTION 12. BREAK PERIODS**

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

**For Renovation and Rehabilitation Project Work Only**, where 4/10s are being

worked, there shall be a morning and afternoon coffee break.

## **ARTICLE 13 - APPRENTICES**

### **SECTION 1. RATIOS**

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women, service-disabled veterans, and economically disadvantaged , Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices and such other appropriate classifications in the maximum ratio permitted by the New York State Department of Labor, or the maximum allowed per trade. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Schedule “A” CBA. The parties encourage, as an appropriate source of apprentice recruitment consistent with the rules and operations of the affiliated unions' apprentice-programs, the use of the Edward J. Malloy Initiative for Construction Skills, Non-Traditional Employment for Women and Helmets to Hardhats.

## **ARTICLE 14-SAFETY PROTECTION OF PERSON AND PROPERTY**

### **SECTION 1. SAFETY REQUIREMENTS**

Each Contractor will ensure that applicable OSHA and safety requirements are, at all times, maintained on the Project Work site and the employees and Unions agree to cooperate fully with these efforts to the extent consistent with their rights and obligations under the law. Employees will cooperate with employer safety policies and will perform their work at all times in a safe manner and protect themselves and the property of the Contractor, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, the Authority's construction Client, and the Authority, from injury or harm, to the extent consistent with their rights and

## DASNY 2024-2028 PLA

obligations under the law. Failure to do so will be grounds for discipline, including discharge.

### **SECTION 2. CONTRACTOR RULES**

Employees covered by this Agreement, shall at all times be bound by the reasonable safety, security, and visitor rules as established by the Contractors and the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR for this Project Work. Such rules will be published and posted in conspicuous places throughout the Project Work sites. Any site security and access policies established by the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR intended for specific application to the construction workforce for Project Work and that are not established pursuant to an Authority directive shall be implemented only after notice to the BCTC and its affiliates and an opportunity for negotiation and resolution by the Labor Management Committee.

### **SECTION 3. INSPECTIONS**

The Contractors and CONSTRUCTION MANAGER OR GENERAL CONTRACTOR retain the right to inspect incoming and outgoing shipments of equipment, apparatus, machinery and construction materials of every kind.

### **ARTICLE 15 - TEMPORARY SERVICES**

Temporary services shall only be required upon the specific request of the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, and when so requested shall be assigned to the appropriate trade with jurisdiction. Temporary system coverage shall be provided by the appropriate Contractors' existing employees during working hours in which a shift is scheduled for employees of this Contractor. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR or Authority may determine the need for temporary system coverage requirements during non-working hours. There shall be no stacking of trades on temporary services. In the event a temporary system is claimed by multiple trades, the matter

shall be resolved through the New York Plan for Jurisdictional Disputes.

**ARTICLE 16 - NO DISCRIMINATION**  
**SECTION 1. COOPERATIVE EFFORTS**

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of creed, race, color, religion, sex, sexual orientation, national origin, marital status, citizenship status, disability, age or any other status provided by law, in any manner prohibited by law or regulation.

**SECTION 2. LANGUAGE OF AGREEMENT**

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

**ARTICLE 17- GENERAL TERMS**  
**SECTION 1. PROJECT RULES**

A. The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and the Contractors shall establish such reasonable Project Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work. These rules will be explained at the pre-job conference and posted at the Project Work sites and may be amended thereafter as necessary. Notice of amendments will be provided to the appropriate Local Union. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

B. The parties adopt and incorporate the BCTC's Standards of Excellence as annexed hereto as Exhibit "B."

## **SECTION 2. TOOLS OF THE TRADE**

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

## **SECTION 3. SUPERVISION**

Employees shall work under the supervision of the craft foreperson or general foreperson.

## **SECTION 4. TRAVEL ALLOWANCES**

There shall be no payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

## **SECTION 5. FULL WORKDAY**

All working shifts commence at the staging area designated for the trade by the CONSTRUCTION MANAGER or GENERAL CONTRACTOR, which may be located and/or relocated within the discretion of the CONSTRUCTION MANAGER or GENERAL CONTRACTOR to an area of floor that provides the most efficiency ("mobile shanties"). It is the CONSTRUCTION MANAGER or GENERAL CONTRACTOR'S responsibility to provide adequate transportation/hoisting so that travel time to the staging area takes no more than fifteen minutes. The parties will cooperate to increase efficiency in this regard.

## **SECTION 6. COOPERATION AND WAIVER**

The CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, Contractors and the Unions will cooperate in seeking any NYS Department of Labor, or any other government, approvals that may be needed for implementation of any terms of this Agreement. In addition,

## DASNY 2024-2028 PLA

the Council, on their own behalf and on behalf of its participating affiliated Local Unions and their individual members, intend the provisions of this Agreement to control to the greatest extent permitted by law, notwithstanding contrary provisions of any applicable prevailing wage, or other, law and intend this Agreement to constitute a waiver of any such prevailing wage, or other, law to the greatest extent permissible only for work within the scope of this Agreement, including specifically, but not limited to those provisions relating to shift, night, and similar differentials and premiums. This Agreement does not, however, constitute a waiver or modification of the prevailing wage schedules applicable to work not covered by this Agreement.

### **ARTICLE 18. SAVINGS AND SEPARABILITY**

#### **SECTION 1. THIS AGREEMENT**

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or if such application may cause the loss of Project funding or any New York State Labor Law exemption for all or any part of the Project Work, the provision or provisions involved (and/or its application to particular Project Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the remainder of the Agreement shall remain in full force and effect to the extent allowed by law (and to the extent no funding or exemption is lost), unless the part or parts so found to be in violation of law or to cause such loss are wholly inseparable from the remaining portions of the Agreement and/or are material to the purposes of the Agreement. In the event a court of competent jurisdiction finds any portion of the Agreement to trigger the foregoing, the parties will immediately enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the court determination and the intent of the parties hereto for contracts to be let in the future.



## **SECTION 2. THE BID SPECIFICATIONS**

In the event that DASNY's, CONSTRUCTION MANAGER'S OR GENERAL CONTRACTOR'S bid specifications, or other action, requiring that a successful bidder (and subcontractor) become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or may cause the loss of project funding or any New York State Labor Law exemption for all or any part of the Project Work, such requirement (and/or its application to particular Project Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the Agreement shall remain in full force and effect to the extent allowed by law and to the extent no funding or exemption is lost. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in construction only where the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR and Contractor voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court or other action taken and the intent of the parties for contracts to be let in the future.

## **SECTION 3. NON-LIABILITY**

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither DASNY, the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR, any Contractor, nor any Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order or injunction, other determination, or in order to maintain funding or a New York State Labor Law exemption for Project Work. Bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

**SECTION 4. NON-WAIVER**

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to signatory Contractors and signatory Unions.

**ARTICLE 19 - FUTURE CHANGES IN SCHEDULE "A" AREA CONTRACTS**

**SECTION 1. CHANGES TO AREA CONTRACTS**

A. Schedule "A" to this Agreement shall continue in full force and effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements that are the basis for Schedule "A" notify the CONSTRUCTION MANAGER OR GENERAL CONTRACTOR in writing of the hourly rate changes agreed to in that Area Collective Bargaining that are applicable to work covered by this Agreement and their effective dates.

B. It is agreed that any provisions negotiated into Schedule "A" collective bargaining agreements will not apply to work under this Agreement if such provisions are less favorable to those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied on Project Work if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

C. Any disagreement between signatories to this Agreement over the incorporation into Schedule "A" of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

**SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS**

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Project Work by any Local Union involved in the renegotiation of Area Local Collective Bargaining Agreements nor shall there be any lock-out on such Project Work affecting a Local

Union during the course of such renegotiations.

**ARTICLE 20 - WORKERS' COMPENSATION ADR**

An ADR program may be negotiated and participation in the ADR Program will be optional by trade.

**ARTICLE 21 - HELMETS TO HARDHATS**

**SECTION 1.**

The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

**SECTION 2.**

The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**REMAINDER OF PAGE LEFT BLANK**

DASNY 2024-2028 PLA

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and

effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**FOR BUILDING AND CONSTRUCTION TRADES COUNCIL  
OF GREATER NEW YORK AND VICINITY**

BY: Gary LaBarbera  
**GARY LABARBERA, President**

**[CONSTRUCTION MANAGER OR GENERAL**

**CONTRACTOR] BY: \_\_\_\_\_**  
**Executive Officer**

**REMAINDER OF PAGE LEFT BLANK**

**AFFILIATE SIGNATURES TO FOLLOW**

DASNY 2024-2028 PLA

**FOR THE LOCAL UNIONS:**

**BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT**

---

TO: Tom Ryan, Business Manager – International Brotherhood of Boilermakers, Iron  
Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO,  
Local Lodge No. 5

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Thomas F. Ryan  
Signature

01/03/2024  
Date

Tom Ryan  
Print name

BM-ST Boilermakers Local 5  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Jack Argila, Business Manager – Bricklayers and Allied Craftworkers,  
Local Union No. 1

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

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Acknowledged and agreed to by:



Signature

  
Date



Print name



Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Carmine D'Amato, Business Manager – Building Concrete & Excavating  
Laborers,  
Local Union No. 731

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

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Acknowledged and agreed to by:



Signature

  
Date



Print name



Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Joseph Geiger, Executive Secretary Treasurer – N.Y.C. and Vicinity District  
Council of Carpenters

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

1/9/24  
Date

Joseph Geiger  
Print name

EST  
Title and Local



DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Gino Castignoli, Business Manager – Cement Masons Local Union No. 780

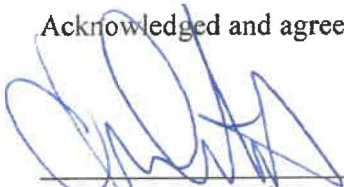

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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Acknowledged and agreed to by:

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Print name  
BM 780  
\_\_\_\_\_  
Title and Local

1/2/24  
\_\_\_\_\_  
Date

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Angelo Angelone, Business Manager – Concrete Workers District Council No. 16

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
\_\_\_\_\_  
Signature

Jan 4, 2024  
Date

Angelo Angelone  
Print name

President, Business Manager, CCWDC16  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Angelo Angelone, Business Manager – Concrete Workers District Council No. 16

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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Acknowledged and agreed to by:

  
\_\_\_\_\_  
Signature

Jan 4, 2024  
\_\_\_\_\_  
Date

Angelo Angelone  
\_\_\_\_\_  
Print name

President, Business Manager, CCWDC16  
\_\_\_\_\_  
Title and Local



DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Pawel Gruchacz – Asbestos, Lead & Hazardous Waste, Laborers  
Local Union No. 78

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

01/18/2024  
Date

Pawel Gruchacz  
Print name

Business Manager, Local 78  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Mike Prohaska, Business Manager – Construction & General Building Laborers  
Local Union No. 79

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Michael Prohaska  
Signature

1/11/2024  
Date

Michael Prohaska  
Print name

Business Manager Local 79  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: William D. Hayes, Business Manager – Derrickmen and Riggers Local  
Union No. 197

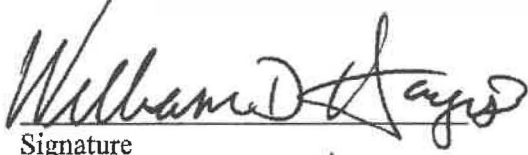
FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

1-19-24  
Date

William D. Hayes  
Print name

ES-T/Business Manager Local 197  
Title and Local

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Christopher Erikson, Business Manager – International Brotherhood of Electrical  
Workers, Local Union No. 3

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature

01/03/2024

Date

Christopher Erikson

Print name

Business Manager, Local 3 IBEW

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Lenny Legotte, Business Manager – International Union of Elevator Constructors,  
Local Union No. 1

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

01/02/2024

Date

Lenny Legotte  
Print name

President / Business Manager  
Title and Local



DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: John Jovic, Business Manager – Heat & Frost Insulators & Allied Workers,  
Local Union No. 12

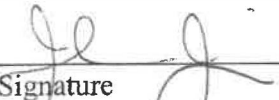
FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
\_\_\_\_\_  
Signature

1/3/2024  
\_\_\_\_\_  
Date

John Jovic  
\_\_\_\_\_  
Print name

BM/FST Local 12  
\_\_\_\_\_  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Jaime Soto, Business Manager – Heat & Frost Insulators & Allied Workers  
Local Union No. 12A


FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

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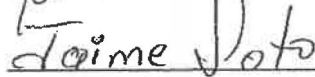
The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Print name

  
\_\_\_\_\_  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Keith J. Loscalzo, Business Manager - Laborers Local 1010

FROM: Gary LaBarbera, President - Building and Construction Trades Council of  
Greater New York and Vicinity.

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTD approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

JANUARY 2, 2024  
Date

Keith J. Loscalzo

Print Name

Business Manager, Laborers' Local 1010

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Peter Myers, President – New York State Iron Workers District Council

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

01/09/24.  
Date

PETER MYERS  
Print name

NYS IRON WORKERS DISTRICT COUNCIL, PRESIDENT.  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Daniel Doyle, Business Manager – Structural Iron Workers, Local Union No. 40

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Daniel D. Doyle  
Signature

1-11-23  
Date

DANIEL D. DOYLE  
Print name

BUSINESS MANAGER / I.S.T.  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Matthew Chartrand, Business Manager – Structural Iron Workers. Local Union  
No. 361

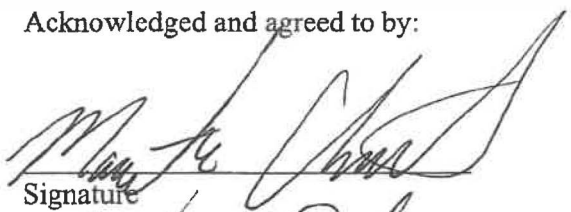
FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---


The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

  
Date

  
Print name

  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: David Bolger, Business Manager – Mason Tenders District Council

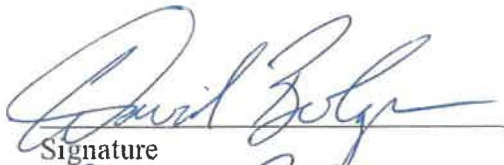
FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

1/3/2024  
Date

David Bolger  
Print name

Business Manager, Mason Tenders D.C.  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Michael Anderson, Business Manager - Metallic Lathers & Reinforcing  
Ironworkers, Local No. 46

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Michael Anderson

Signature

1/3/24

Date

Michael Anderson

Print name

Business Manager

Title and Local



DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Joseph Nolan,, Business Manager – Ornamental Iron Workers,  
Local Union No. 580

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature

JOSEPH NOLAN

Print name

BUSINESS MANAGER / FST

Title and Local

1/9/24

Date

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Joseph Azzopardi, Business Manager – Glaziers No. 1087, District Council 9

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature **Joseph Azzopardi**  
**Business Manager/Secretary Treasurer - DC9**

Print name

Title and Local

1/23/24

Date

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Joseph Azzopardi, Business Manager -- Painters, District Council No. 9

FROM: Gary LaBarbera, President -- Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature

11/23/24  
Date

Print name

**Joseph Azzopardi**  
Business Manager/Secretary Treasurer - DC9

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Joseph Azzopardi, Business Manager – Metal Polishers, Local Union No. 8A-  
28A; District Council No. 9

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature

  
Date

Print name

**Joseph Azzopardi**  
**Business Manager/Secretary Treasurer - DC9**

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

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TO: Joseph Azzopardi, Business Manager – Drywall Tapers Local Union No 1974,  
District Council 9

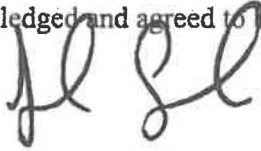
FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

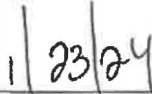
The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature



Date

Print name

**Joseph Azzopardi**  
**Business Manager/Secretary Treasurer - DC9**

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Joseph Azzopardi, Business Manager – Bridge & Structural Steel Painters, Local  
Union No. 806, District Council 9

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature



Date

Print name

**Joseph Azzopardi**  
**Business Manager/Secretary Treasurer - DC9**

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Dale Alleyne, Business Manager – Operative Plasterers Local Union No. 262

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

1-2-23  
Date

Dale Alleyne  
Print name

Business Manager LUL 262  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Paul O'Connor, Business Manager – UA Plumbers Local Union No. 1

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Paul O'Connor  
Signature

1/4/24  
Date

PAUL O'CONNOR  
Print name

Business Manager UA Local #1  
Title and Local



DASNY 2024-2028 PLA

**BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT**

---

**TO:** Daniel L. Wright, President/Principal Officer – Private Sanitation, Teamsters  
Local Union No. 813

**FROM:** Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature

JAN 24 2024

Date

Daniel L. Wright

Print name

President

LOCAL 813, I.B.T.

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Nicolas Siciliano, Business Manager – Roofers & Waterproofers,  
Local Union No. 8

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:



Signature

1/18/24  
Date

Nick Siciliano

Print name

Business Manager Roofers + WP Local 8

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Eric Meslin, President/Business Manager – Sheet Metal Workers,  
Local Union No. 28

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

*Eric Meslin*

Signature

*1/5/24*

Date

*Eric Meslin*

Print name

*President and Business Manager Sheet Metal Workers' Local 28*

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Dante Dano, President/Business Manager – Sheet Metal Workers,  
Local Union No. 137

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Dante Dano, Jr. (Signature)  
Signature

01/03/2024

Date

Dante Dano, Jr. "SIGNS & GRAPHICS"  
Print name

President/ Business Manager- SMART Local 137  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Robert Bartels, Jr., Business Manager – UA Steamfitters, Local Union No. 638

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Robert J. Bartels Jr.

Signature

1/2/24

Date

Robert J. Bartels, Jr.

Print name

Business Manager - 638

Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: Thomas Gesualdi, President – Teamsters, Local Union No. 282

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

  
Signature

  
Date

  
Print name

  
Title and Local

DASNY 2024-2028 PLA

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND  
VICINITY AFFILIATE EXECUTION PAGE FOR  
PROJECT LABOR AGREEMENT

---

TO: William A. Hill, President – Tile, Marble & Terrazzo, B.A.C. Local Union No. 7

FROM: Gary LaBarbera, President – Building and Construction Trades Council of Greater  
New York and Vicinity

---

The Executive Board of the Building and Construction Trades Council of Greater New York has approved the Project Labor Agreement enclosed herewith. Additionally, the Building Trades Department of the AFL-CIO has approved the same. This Project Labor Agreement has also been executed by the Construction Manager/General Contractor/Owner-Developer.

Pursuant to the Executive Board and BCTC approval of this PLA, please execute below, which shall constitute your agreement with the PLA and make the PLA valid, binding and enforceable.

Acknowledged and agreed to by:

Matthew Cup  
Signature

1/24/2025  
Date

MATTHEW Cup  
Print name

SECRETARY TREASURER BAC LOCAL #7 T.M.T  
Title and Local

**DASNY NEW CONSTRUCTION PLA**

**SCHEDULE "A" - CBAs**

<b>Union</b>	<b>Current Agreement w/</b>
Architectural and Ornamental Iron Workers Local Union 580, AFL-CIO	Allied Building Metal Industries, Inc.
Building, Concrete, Excavating & Common Laborers Local 731	Independent
Building, Concrete, Excavating & Common Laborers Local 731	Members of the General Contractors Association of New York, Inc.
Bricklayers Local 1 of the International Union of Bricklayers and Allied Craftworkers	Independent
District Council No. 9, I.U.P.A.T Glaziers Local 1087	Window and Plate Glass Dealers Association
Drywall Tapers and Painters Local 1974, affiliated with International Union of Painters & Allied Trades and Drywall Taping Contractor's Association & Association of Wall-Ceiling & Carpentry Industries NY, Inc.	Independent
Enterprise Association of Steamfitters and Apprentices Local 638	Mechanical Contractors Association of NY, Inc.
Enterprise Association of Steamfitters and Apprentices Local 638	Independent
Elevator Constructors Local 1 of NY and NJ	ThyssenKrupp Elevator Corporation
Elevator Constructors Local 1 of NY and NJ	Independent
Highway Road and Street Laborers Local Union 1010 of the District Council of Pavers and Road Builders of the Laborers' International Union of North America AFL- CIO	Independent
Highway Road and Street Laborers Local Union 1010 of the District Council of Pavers and Road Builders of the Laborers' International Union of North America AFL- CIO	Member of the General Contractors Association of New York, Inc.
International Association of Heat and Frost Insulators and Allied Workers Local No. 12 of New York City	Independent
International Association of Heat and Frost Insulators and Allied Workers Local No. 12 of New York City	The Insulation Contractors Association of New York City, Inc.



# DASNY NEW CONSTRUCTION PLA

International Association of Heat and Frost Insulators and Allied Workers Local No. 12A of New York City	Independent
International Association of Heat and Frost Insulators and Allied Workers Local No. 12A of New York City	Environmental Contractors Association, Inc.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 5	Boilermakers Association of Greater New York
Local Union No. 3 International Brotherhood of Electrical Workers, AFL-CIO	New York Electrical Contractors Association
International Brotherhood of Teamsters, Local 282, High Rise Contract	Building Contractors Association & Independents
Local 46 Metallic Lathers Union and Reinforcing Iron Workers of NY and Vicinity of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers	General Contractors Association
Local 46 Metallic Lathers Union and Reinforcing Iron Workers of NY and Vicinity of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers	Independent
Local 8 Roofers, Waterproofers & Allied Workers	Roofing and Waterproofing Contractors Association of New York and Vicinity
Local Union 1 of the United Association of Journeymen and Apprentices of the Pipe Fitting Industry of the United States and Canada	Association of Contracting Plumbers of the City of New York
Local Union Number 40 & 361 of Bridge, Structural Ornamental and Reinforcing Iron Workers AFL-CIO	Independent
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Building Contractors Association
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Interior Demolition Contractors Association
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Independent
Mason Tenders DC & Laborers' International Union – Local 78 & 79	NYCDCA
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Environmental Contractors Association

# DASNY NEW CONSTRUCTION PLA

Mason Tenders DC & Laborers' International Union – Local 78 & 79	ABMC
Operative Plasterers' and Cement Masons' International Association Local No. 262	Independent
Painters and Allied Trades AFL-CIO, District Council No. 9 (Painting and Protective Coatings CBA)	Independent
Painters and Allied Trades AFL-CIO, District Council No. 9 (Painting and Protective Coatings CBA)	<u>The Association of Master Painters &amp; Decorators of NY, Inc. and The Association of Wall, Ceiling &amp; Carpentry Industries of NY, Inc. and The Window and Plate Glass Dealers Association</u>
Sheet Metal Workers' International Association, Local 28	Sheet Metal & Air Conditioning Contractors Association of New York City, Inc.
Sheet Metal Workers' International Association, Local 137	The Greater New York Sign Association
Structural Steel and Bridge Painters Local 806, DC 9 International Union of Painters and Allied Trades, AFL-CIO	New York Structural Steel Painting Contractors Association
Teamsters Local 813	Independent
Teamsters Local 813	IESI NY Corporation
The Cement Masons' Union, Local 780	Cement League
The District Council of Cement and Concrete Workers (comprised of Local 6A; Local 18A and Local 20)	Cement League
The District Council of Cement and Concrete Workers (comprised of Local 6A; Local 18A and Local 20)	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Heavy Carpenters	GCA
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Dockbuilders Local No. 1556	Concrete Contractors of NY

# DASNY NEW CONSTRUCTION PLA

The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Dockbuilders Local 1556	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Millwright Local 740	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Timbermen Local 1556	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Timbermen Local 1556	GCA
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Heavy Carpenters	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Carpenters	Manufacturing Woodworkers Association of Greater New York Incorporated
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	The Hoisting Trade Association of New York, Inc.
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	The Test Boring Association
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	Building Contractors Association
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	The Association of Wall-Ceiling & Carpentry Industries of New York, Incorporated
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners	The Cement League
The District Council of NYC and Vicinity of the United Brotherhood of Carpenters and Joiners of America	New York City Millwright Association

## DASNY NEW CONSTRUCTION PLA

The District <u>Council of New York</u> City and Vicinity of the United Brotherhood of Carpenters and Joiners	Greater New York Floor Covering Association
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Carpenters	Association of Architectural Metal & Glass
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Carpenters	Concrete Contractors of NY
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Building Construction Carpenters	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Local 2287	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Shop Carpenters	Independent
The Tile Setters and Tile Finishers Union of New York and New Jersey, Local 7 of the International Bricklayers and Allied Craftworkers	The Greater New York and New Jersey Contractors Association
United Derrickmen & Riggers Association, Local 197 of NY, LI, Westchester & Vicinity	Contracting Stonesetters Association Inc.
United Derrickmen & Riggers Association Local 197 of NY, LI, Westchester and Vicinity	Building Stone and Pre-cast Contractors Association

## DASNY NEW CONSTRUCTION PLA

### EXHIBIT “A” - LETTER OF ASSENT

#### Project Labor Agreement - - Letter of Assent

The undersigned party confirms that it agrees to be a party to and be bound by the DASNY Project Labor Agreement (“Project Labor Agreement”) as such Project Labor Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project as defined in the Project Labor Agreement (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the Project Labor Agreement, a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the Project Labor Agreement, together with any and all schedules; amendments and supplements now existing or which are later made thereto;
- (2) Agrees to be bound by the legally established and applicable collective bargaining agreements and local trust agreements as set forth in the Project Labor Agreement.
- (3) Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor;
- (4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Project Labor Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the PROJECT and shall require labor harmony from every lower tier subcontractor it engages to work on the PROJECT. Labor harmony disputes/issues shall be subject to the Labor Management Committee’s Pre-Job conference provisions.
- (5) Agrees to secure from any Contractor(s) (as defined in the Project Labor Agreement) which is or becomes a Subcontractor (of any tier), to it, a duly executed Agreement to be bound in form identical to this document.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Name of Contractor or subcontractor)

## DASNY NEW CONSTRUCTION PLA

### EXHIBIT “B” – STANDARD OF EXCELLENCE

#### NEW YORK CITY BUILDING AND CONSTRUCTION TRADES COUNCIL

The purpose of this Standard of Excellence is to reinforce the pride of every construction worker and the commitment to be the most skilled, most productive and safest workforce available to construction employers and users in the City of New York. It is the commitment of every affiliated local union to use our training and skills to produce the highest quality work and to exercise safe and productive work practices.

The rank and file members represented by the affiliated local unions acknowledge and adopt the following standards:

- Provide a full day’s work for a full day’s pay;
- Safely work towards the timely completion of the job;
- Arrive to work on time and work until the contractual quitting time;
- Adhere to contractual lunch and break times;
- Promote a drug and alcohol-free work site;
- Work in accordance with all applicable safety rules and, procedures,
- Allow union representatives to handle job site disputes and grievances without resort to slowdowns, or unlawful job disruptions;
- Respect management directives that are safe, reasonable and legitimate;
- Respect the rights of co-workers;
- Respect the property rights of the owner, management and contractors.

The Unions affiliated with the New York City Building and Construction Trades Council will expect the signatory contractors to safely and efficiently manage their jobs and the unions see this as a corresponding obligation of the contractors under this Standard of Excellence. The affiliated unions will expect the following from its signatory contractors:

- Management adherence to the collective bargaining agreements;
- Communication and cooperation with the trade foremen and stewards;
- Efficient, safe and sanitary management of the job site;
- Efficient job scheduling to mitigate and minimize unproductive time;
- Efficient and adequate staffing by properly trained employees by trade;
- Efficient delivery schedules and availability of equipment and tools to ensure efficient job progress;
- Ensure proper blueprints, specifications and layout instructions and material are available in a timely manner
- Promote job site dispute resolution and leadership skills to mitigate such disputes;
- Treatment of all employees in a respectful and dignified manner acknowledging their contributions to a successful project.

The affiliated unions and their signatory contractors shall ensure that both the rank and file members and the management staff shall be properly trained in the obligations undertaken in the Standard of Excellence.



## Buildsafe NYC Safety Codes of Conduct

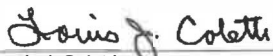
Mission Statement – To ensure the safety of all workers and the public by maintaining high standards of the unionized construction industry on all construction projects under the supervision of contractors affiliated with the Building Trades Employers' Association and Building and Construction Trades Council Union Affiliates.

1. BTEA member companies and BCTC unions and their members shall work together in a professional and respectful manner at all times.
2. The workforce shall adhere to the use of personal protective equipment (PPE) usage in accordance with OSHA Guidelines at all times including:
  - a. ANSI compliant Hard Hats (with ratchet suspension) at all times (supplied by employer)
  - b. Construction-type Work Boots at all times
  - c. Long Pants and shirts with at least short sleeves at all times (no shorts or tank tops)
  - d. ANSI compliant Eye Protection shall be worn at all times (supplied by employer)
  - e. Adequate Hearing Protection in their possession and used as needed (supplied by employer)
  - f. High-vis outer garments to be worn on site pursuant to OSHA Guidelines (supplied by employer)
3. CM and Subcontractor management shall implement a fair and consistent disciplinary policy for all site personnel regarding the adherence to site safety rules and requirements. Likewise, a joint labor/management team will periodically assess project wide implementation of these Codes.
4. CM firms shall maintain clean and functioning workforce restrooms, hygiene facilities and housekeeping, initially and throughout the duration of the project. Management and workforce shall make all efforts to keep the facilities graffiti free.
5. All personnel shall adhere to a strict policy against drug and alcohol possession and use on sites and during hours of work.
6. All workers must complete a job specific Project Safety Orientation Class prior to beginning work on every major project. Workers shall present either a valid OSHA 10 or 30 card within 5 years of date of issue in addition to all certifications and proof of safety training for trade specific tasks they will be engaging in on the project. Worker certifications of safety training for specific tasks such as fire watch, flagmen, and safety attendant must be verified. All personnel must have and be able to show a valid OSHA 10 card with them at all times.

## DASNY NEW CONSTRUCTION PLA

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7. Management will create a method for expedited entry procedures to allow access to project sites for general contractors, subcontractors and labor. Labor representatives shall be provided with site access immediately. The Building Trades Employers' Association and the Building and Construction Trades Council Union Affiliates will endeavor to develop a universal job access badge for Union representatives..
8. No unauthorized cell phones, portable media devices, radios, or other devices that limit hearing and attention shall be used while working on sites.
9. Ground Fault Circuit Interrupters (GFCI) will be used on all power tools and extension cords.
10. Union trade representatives shall participate in a regularly scheduled site safety meeting on all projects regardless of size.
11. Extreme effort shall be made to isolate the public from all construction activity. Specifically, systems shall be put in place to control falling materials and pedestrian exposure. This should be a top priority for the entire project workforce.
12. Workers shall honor security access control systems to establish entry to sites by authorized personnel only, where applicable.
13. Fall protection management shall be a top project priority. Workers shall maintain and use necessary fall protection systems and procedures where appropriate. Engineering controls and work methods which eliminate, guard, or otherwise control fall hazards shall take priority over personal fall arrest system usage.
14. Where hazardous materials are present, projects shall implement efforts to communicate and control potential exposure to the workforce.
15. No smoking at any time anywhere on the construction site per Department of Buildings rules and regulations.
16. All incidents/accidents, or unsafe working conditions should be immediately reported to supervisors.



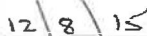
Louis J. Coletti  
President & CEO  
Building Trades Employers' Association



Gary LaBarbera  
President  
Building and Construction Trades Council



Date



Date



## DASNY NEW CONSTRUCTION PLA

### EXHIBIT “C” – DRUG AND ALCOHOL POLICY

#### PREAMBLE

WHEREAS, Dormitory Authority of the State of New York, as Sponsor (“Sponsor”) \_\_\_\_\_ (“Project”) desires to provide for a safe, drug and alcohol-free work site for the Project;

WHEREAS, the parties have entered into a separate Project Labor Agreement for the Project and have agreed to negotiate in good faith a Project Drug & Alcohol Testing Policy;

WHEREAS, this Testing Policy is collectively negotiated between \_\_\_\_\_ the (“CM”) and the New York City Building and Construction Trades Council (“Council”) (the CM and BCTC are collectively referred to hereafter as the “Parties”);

WHEREAS, the Parties each currently have respective drug and alcohol policies, including the Projects' Zero-Tolerance policy;

WHEREAS, the Parties desire to maximize project safety conditions for the Project personnel and public, as well as deter violations of the Parties' respective drug and alcohol policies;

NOW, THEREFORE, the Parties agree to this Policy as of the date hereof,

#### ARTICLE 1 - PARTIES

This Drug & Alcohol Testing Policy (“Policy”) is hereby established by the CM and the Council, on behalf of itself and its affiliated local union members, and the signatory local unions on behalf of themselves and their members.

#### ARTICLE 2-GENERAL CONDITIONS

##### SECTION 2.1 - SUMMARY

In order to reinforce the Parties' respective drug and alcohol policies, including the Projects' zero tolerance policy regarding the prohibition of the use of drugs and alcohol, and to deter Project personnel from violating those policies, the Parties agree that all Project Personnel (defined later) will be required to submit to drug and/or alcohol testing randomly, post-accident, and for reasonable suspicion.

Any individual on site that violates this Policy is subject to disciplinary action, including, without limitation, loss of site access privileges.

##### SECTION 2.2- REVOCATION OF PROJECT ACCESS PRIVILEGES

Any one of the following occurrences will result in the immediate revocation of a Project Personnel's project access privileges:

1. An individual is found selling or using drugs or alcohol, or otherwise is under the influence of drugs or alcohol, subject to the other terms of this Policy, on a Project Site;
2. An individual has been convicted under any criminal drug or alcohol statute for a violation occurring in the workplace within the past two years;
3. An individual who refuses to abide by the Projects' drug and alcohol policy, or refuses to submit to a test in accordance with this Policy;
4. An individual who switches, adulterates, or in any way tampers with a specimen

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required to be submitted in accordance with this Policy.

### SECTION 2.3 - DEFINITIONS

Confirmed Positive Test: The presence of drugs, drug metabolites, or alcohol in a person's body that equals or exceeds the established cut off levels as defined in Exhibit I. For drugs, the sample will have undergone Laboratory screening and confirmation testing and must have been verified as positive by a Medical Review Officer. A positive test result for alcohol obtained through Evidential Breath Testing is considered a Confirmed Positive Test.

Employee Assistance Program (EAP): An EAP is generally considered a workplace-based, confidential program designed to help employees deal effectively with a variety of personal problems, and, of relevance to this policy, substance abuse problems. The EAP promotes assessments and short-term counseling. An EAP shall also include any similar education or rehabilitation program provided by the Council or its respective members. The Project Personnel that are required to participate in the EAP shall be responsible for the cost of their consultation with an EAP and/or participation in any education or rehabilitation program.

Evidential Breath Testing Device (EBT): A device that is used to measure alcohol in the breath and which meets National Highway Traffic Safety Administration's specifications for precision and accuracy.

Laboratory: A laboratory that is SAMHSA (Substance Abuse and Mental Health Services Administration) certified for the testing of drugs.

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by an employer's drug testing plan who has knowledge of substance abuse disorders and medical training to interpret and evaluate a donor's confirmed positive test result together with his/her medical history and all other relevant information.

Previous Worker: All individuals whose employment relationship with the contractor, company or organization no longer exists.

Project Site: The construction area for respective Project.

Reasonable Suspicion: When a qualified trade contractor, the Sponsor or CM as set forth in Section 3.7, reasonably believes that an individual has violated this Policy. Reasonable suspicion is based upon (1) specific, current, behavioral or performance indicators, (2) the possible manufacture, distribution, consumption or possession of unauthorized drugs, drug paraphernalia, or alcohol, or (3) documented investigation by an agency retained by, or otherwise independent from, the Sponsor or CM.

### SECTION 2.4 - INCLUDED SUBJECTS

This Policy shall cover all employees of the Sponsor, Construction Manager and Project trade contractors, their subcontractors and any other of their respective personnel at any level that are performing any activity at a Project Site, inclusive of managers, superintendents and supervisors, except as specifically excluded by Section 2.5 of this Policy (collectively and singularly, "Project Personnel").

### SECTION 2.5 - EXCLUDED SUBJECTS

The following persons are not subject to the provisions of this Policy:

- A. Employees and entities engaged in off-site manufacture, modifications, repair,

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maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery;

- B. Vendors and employees of vendors engaged on a Project Site in equipment testing, inspection, training, warranty work, or engaged in corrections of defective or nonconforming work, unless such employees are expressly included in the bargaining unit of a local signatory to this Agreement;
- C. Employees engaged in ancillary work on a Project which is performed by third parties, such as electric utilities, gas utilities, telephone companies, and railroads, or any other work not constituting Project work;
- D. Employees of any governmental authority (state, local or otherwise);
- E. Employees and contractors engaged in work on the Project Site as part of due diligence or monitoring, which work is ancillary to Project work; and
- F. Emergency responders.

### SECTION 2.6 - PRESCRIPTION AND NON-PRESCRIPTION DRUGS

The use of prescription drugs not prescribed directly to Project Personnel is prohibited, including the use of drugs prescribed to a spouse or domestic partner. The use of non-prescription drugs that are sold outside the United States and that contain substances that are illegal or require a prescription in the United States are prohibited, unless prescribed by a licensed physician.

### SECTION 2.7 - SEARCHES

In order for the CM to ensure the safety of Project Personnel and for the CM to protect its assets, the CM shall have the right upon good cause (such as reasonable suspicion of a violation of this Policy) to conduct reasonable searches for alcohol, drugs and related paraphernalia anywhere within the boundaries of a Project Site. A search may include any assets owned or leased by any Project Personnel that is on a Project Site, including without limitation, vehicles, lockers, gang boxes, desks and personal property brought onto a Project Site, but excluding personal body searches or physical contact with employees.

## ARTICLE 3 - DRUG & ALCOHOL TESTING

### SECTION 3.1 - COLLECTION PROCESS

As of June 01, 2019, Project Personnel may be required to submit urine samples ("Preliminary Drug Screening") for the purpose of detecting the presence of drugs as part of the random, post-accident or reasonable suspicion testing, in accordance with chain of custody protocols as established by Substance Abuse and Mental Health Services Administration (SAMHSA), utilizing an instant result test cup for Preliminary Drug Screenings, such testing is to be performed on-site by an independent service provider. The results from the instant result test cup will be considered preliminary. The sample will be sent to a SAMHSA certified testing laboratory for confirmation.

As of the date hereof, all Project Personnel will be required to submit to an Evidential Breath Test (EBT) for the purpose of detecting the presence of alcohol when submitting to random, post-accident or reasonable suspicion testing. Alcohol testing will not be conducted for pre-access testing.

### SECTION 3.2 - NEGATIVE PRELIMINARY DRUG SCREENING

Project Personnel with a negative Preliminary Drug Screening will be considered conditionally accepted for Project site access, pending confirming laboratory results. Site access privileges will be

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revoked if the subsequent laboratory results determine that the sample has tested positive for drugs or that the sample has been adulterated.

### SECTION 3.3 POSITIVE PRELIMINARY DRUG SCREENING

If the Preliminary Drug Screening indicates a positive result, the individual will not be allowed access to the Project Site. The sample will be sent to the certified laboratory for analysis and, if applicable, reviewed by the Medical Review Officer (MRO). If the laboratory confirmation results are also positive, the individual will be considered in violation of this Policy and their site access will be revoked for at least 30 days. If the laboratory confirmation results are negative, the Project Personnel's site access will not be revoked.

### SECTION 3.4 CONFIRMED POSITIVE TEST RESULTS

#### A. POSITIVE DRUG TEST

A drug test is considered positive if the test results exceed the limits shown in Exhibit 1, which is attached hereto and incorporated herein by reference. The test will be confirmed through a second analysis process and reviewed by an MRO before results are reported. Project Personnel with confirmed positive drug test results will have their site access revoked. In case of a "false positive" result, any such Personnel shall be entitled to the reimbursement of any wages lost during the suspension caused by any such false positive result.

#### B. POSITIVE EBT

An EBT is considered positive if the test results exceed .04 BrAC, or as otherwise set forth in Exhibit 1. Project Personnel with a positive alcohol test result will be subject to the remedies set forth in Exhibit 1.

#### C. REINSTATEMENT OF SITE ACCESS PRIVILEGES

(a) Subject to section 3.4(C)(a) immediately below, if the site access of a Project Personnel has been revoked pursuant to this Policy, then any such person may request that their site access be reinstated after 30 days, provided that all of the following conditions are met to the reasonable satisfaction of the CM. :

1. The individual has provided proof of wellness from an accredited rehabilitation facility or has provided proof that treatment isn't needed as attested to by a licensed health care provider specializing in the diagnosis and treatment of alcohol and drug abuse.
2. A current drug and alcohol test are obtained within three (3) days of the request for re-access to the site and proof of a negative test result has been received; and
3. The individual agrees to submit to multiple testing for two (2) full years from the date of gaining re-access to the project, the scheduling of which will be determined at the sole discretion of the CM. If all of these conditions have been met, the Design-Builder agrees that it will not unreasonably withhold their consent to any such request.

(b) Unlawful possession, concealment, use, purchase, sale, manufacture, dispensation or distribution of illegal drugs or un-prescribed controlled substances on the Project Premises will subject the Project Personnel Employee to immediate removal from the Project Premises and shall bar such Project Personnel Employee from returning for a minimum of three (3) months, which return shall,

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in any event, be subject to the reasonable approval by CM.

(c) All of the Parties agree that any such Project Personnel will only be entitled to any such reinstatement of site access privileges one time and that any subsequent violation of this Policy will result in the permanent termination of access to the Project Site.

### SECTION 3.5 - RANDOM TESTING

A third-party provider designated by the CM will randomly select by an objective criterion a testing pool for random drug and/or alcohol testing from all Project Personnel with site access cards. Any individual selected for a random drug and/or alcohol test will be required to submit to an Evidential Breath Test (EBT) and/or drug test. Individuals may be tested more than once during any given time period. The Parties acknowledge and agree that an EBT may be required without a drug test and that a drug test may be required without an EBT, as solely determined by the CM.

If an individual is unable to attend the first scheduled random drug test as a result of being involved in a work-related task, such drug test will be rescheduled and will be completed at or before the conclusion of such employee's then current work shift. If the second drug test is missed for any reason, the incident will be reviewed by the CM, who shall have the right to terminate the site access privileges of any such Project Personnel until such time as that Project Personnel has complied with this Policy. If the individual refuses to take the test, their access privileges will be immediately terminated for cause.

### SECTION 3.6 - POST ACCIDENT TESTING

After each work-related incident or injury requiring the services of a licensed health care provider, all Project Personnel involved with the incident will be required to submit to a drug and/or alcohol test immediately following the incident. In instances where emergency care is necessary, the drug and/or alcohol test shall be obtained by the care facility, if possible, within 24 hours after treatment is rendered. If more than 48 hours have passed before an injury is reported and treated by a licensed health care provider, an alcohol test will not be required.

In addition, any Project Personnel involved in a non-injury related incident at a Project Site with damages at or in excess of \$200 will be required to submit to a drug and/or alcohol test unless:

- A. It is determined, after conducting an investigation and interviewing all employees involved and any witnesses, that the employee's performance can be completely discounted as a contributing factor to the incident; or
- B. It is determined, after conducting an incident investigation and interviewing all employees and any witnesses that the incident was caused by inadequate equipment or system design, and/or premature failure of equipment or system components.

### SECTION 3.7 - REASONABLE SUSPICION TESTING

All Project Personnel will be required to submit to a drug and/or alcohol test when there is reasonable suspicion the individual has violated this policy.

Reasonable suspicion includes, without limitation, the following:

- A. Violent or irrational behavior;
- B. Emotional or physical unsteadiness;
- C. Sensory or motor-skill malfunctions;
- D. Slurred speech;

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- E. The odor of alcohol or drugs on clothing or breath in conjunction with other indicators;
- F. Possession of alcohol, unauthorized drugs or drug paraphernalia; or
- G. Documented evidence of an independent investigation regarding Project Personnel's consumption of what is reasonably believed to be an alcoholic beverage or drugs in violation of the Project's policies and/or this Policy.

Reasonable suspicion testing may only be ordered by supervisory personnel that: (a) have been trained to recognize the above referenced factors; or (b) have received credible documentary evidence from an independent investigator that a Project Personnel has violated a drug and/or alcohol policy. It is agreed that any certified training program shall satisfy the training requirement.

### SECTION 3.8 - PRIVACY CONSIDERATIONS

The Parties agree to use reasonable efforts to conduct any testing pursuant to this Policy in accordance with the privacy concerns of Project Personnel. To address these concerns, the Parties agree that:

1. The testing station(s) shall be screened off, or otherwise closed off from public view.
2. All documents and information regarding the testing, including test results, shall be maintained by the respective custodian(s) of record in accordance with their respective privacy policies, which any Project Personnel shall be entitled to review upon timely request.
3. The Parties agree to make a good faith effort to resolve any other privacy concern of Project Personnel regarding this Policy, provided that any such concerns do not interfere with the purpose of this Policy.

## ARTICLE 4 – GRIEVANCE

### SECTION 4.1 - REPRESENTED WORKERS

Nothing in this Policy shall restrict a member of a signatory local union from filing a grievance in accordance with the member's collective bargaining agreement or a Project Labor Agreement, provided that the grievance shall be limited to whether the removal of a member for violation of this Policy was conducted in compliance with the terms and conditions set forth herein.

### SECTION 4.2 - HOLD HARMLESS

The Design-Builder agrees to hold harmless and indemnify the Union/Council and its representatives from any liability that may be incurred as a result of the Company's Drug and Alcohol Policy to the extent caused by the negligence or intentional misconduct of the Design-Builder.

IN WITNESS WHEREOF the parties have agreed to this Policy as of \_\_\_\_\_.

FOR CONSTRUCTION MANAGER

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

DASNY NEW CONSTRUCTION PLA  
FOR GREATER NEW YORK CITY BUILDING TRADES COUNCIL

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: Gary LaBarbera \_\_\_\_\_

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

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### EXHIBIT 1

#### CLASS OF DRUGS TESTED AND THEIR RESPECTIVE CUT-OFF LIMITS

The cut-off limits established are those recommended by the U.S. Department of Health and Human Services in their mandatory Guidelines for Federal Workplace Drug Testing Programs.

	Screening	Confirmation
	Cut-Off	Cut-off
<u>Drug Class</u>	<u>Limit (ng/ml)</u>	<u>Limit (ng/ml)</u>
Amphetamines	1000	500
Benzoyllecgonine (Cocaine Metabolite)	300	150
Cannabinoids (THC)	50	15
*Opiates	2000	10
Phencyclidine (PCP)	25	25

Confirmation screening is done by means of GC/MS analysis.

\*The GC/MS confirmation for opiates will be for both codeine and morphine separately. If morphine is equal to or greater than 2,000ng/ml then the GC/MS confirmation analysis for 6- acetylmorphine (6-MAM) is at a cut-off level of 10ng/ml.

#### Alcohol Screening

All Project Personnel will be required to submit to an EBT under the random, post-accident, and reasonable suspicion test arenas, for the purpose of detecting presence of alcohol. If this test supports a positive result for presence of alcohol, the Project Personnel will be considered in violation of this Policy.

If the results of the EBT are:

1. Above 0.001 BrAC, but at or below 0.020 BrAC, a second test will be conducted within approximately 15 minutes.
  - If the second BrAC test is less than the first BrAC, the results will be deemed negative and the Project Personnel may return to work, if there are no other outstanding issues.
  - If the second BrAC is increasing, but below 0.04 BrAC, the results will be deemed negative, but the Project Personnel will be sent home for the day and the Construction Manager shall be notified. If a Project Personnel is sent home two times within a six-month period pursuant to this Section I, then any such Project Personnel shall be deemed to have tested positive and will be subject to the applicable remedies set forth in Section 2 below.
2. Above 0.02 BrAC, but below 0.06 BrAC, a second test will be conducted after approximately 15 minutes.
  - Notwithstanding anything set forth above to the contrary, a Project Personnel may elect to voluntarily go home for the day instead of taking a second test and the results will be deemed negative, provided that any such Project Personnel may



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- not voluntarily go home more than once within a twelve month period.
  - If the second BrAC test is at or below 0.02 BrAC, the results will be deemed negative and the Project Personnel may return to work if there are no other outstanding issues.
  - If the second BrAC test is above 0.020, but below 0.06, the results will be deemed positive, the Project Personnel will be sent home for the day and their site access will be revoked for at least five [5] calendar days and until such time as the Project Personnel has been evaluated by an EAP professional skilled in substance abuse and confirmed fit for duty.
  - Any Project Personnel who is deemed positive two times within two years pursuant to this Section 2 will have their site access privileges terminated and will be entitled to the limited relief set forth in Section 3 .4( c) of the Policy.
3. At or above .06 BrAC, the Project Personnel will have their site access privileges terminated, after which they will be entitled to the limited relief set forth in Section 3.4(C) of the Policy

**D A S N Y**

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

# **JOB ORDER CONTRACTING PROGRAM**

## **CONSTRUCTION CONTRACT FORMS**

**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000

**BUFFALO:** 6047 Transit Road, Suite 103, East Amherst, NY 14051 | 716-566-4400

**NEW YORK CITY:** 28 Liberty Street, Fl 55, New York, NY 10005 | 212-273-5000

**ROCHESTER:** 3495 Winton Place, Building C, Suite 1, Rochester, NY 14623 | 585-461-8400

**DASNY**

**WE FINANCE, DESIGN & BUILD  
NEW YORK'S FUTURE.**

[www.dasny.org](http://www.dasny.org)



**DASNY**

## SCOPE VERIFICATION FORM

At the discretion of DASNY's Opportunity Programs Group, Scope Verification Forms completed & signed may be requested for any MBE/WBE/SDVOB subcontractor/supplier listed on the approved Utilization Plan.

**FAILURE TO PROVIDE THE REQUIRED DOCUMENTATION MAY RESULT IN THE DELAY OR DENIAL OF THE INITIAL PROGRESS PAYMENT OR FUTURE PROGRESS PAYMENTS**

### PRIME/PROJECT INFORMATION (Please complete all fields)

Prime Contractor: \_\_\_\_\_ Project No: \_\_\_\_\_  
Contract/Job Order No: \_\_\_\_\_ Project Name/Facility: \_\_\_\_\_

### SUBCONTRACTOR (Please complete all fields) & if applicable (select one) ☐ MBE ☐ WBE ☐ SDVOB

Company Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Phone No: \_\_\_\_\_ Email: \_\_\_\_\_

### MBE/WBE/SDVOB SUBCONTRACTOR/SUPPLIER (select one) ☐ MBE ☐ WBE ☐ SDVOB

Company Name: \_\_\_\_\_ Contract Person: \_\_\_\_\_  
Phone No: \_\_\_\_\_ Email: \_\_\_\_\_

### MBE/WBE/SDVOB SUBCONTRACTOR/SUPPLIER SCOPE OF SERVICES (please complete all fields)

Identify the specific scope of services that will be performed by the proposed MBE/WBE/SDVOB subcontractor/supplier listed above.

NAICS Code (6 Digit Number)	Description of Work	Contract Amount
		\$
		\$
		\$
<b>Total</b>		\$

The Contractor shall notify and obtain written approval from DASNY for any changes needed to this Scope Verification Form.

The Contractor and MBE/WBE/SDVOB subcontractor/supplier shall certify that the MBE/WBE/SDVOB subcontractor/supplier will perform the above scope of work and will not subcontract its work, in whole or in part, to a Non-MBE/WBE/SDVOB entity.

### MBE/WBE/SDVOB SUBCONTRACTOR/SUPPLIER

\_\_\_\_\_  
Principal or Officer (print name and title)

\_\_\_\_\_  
Principal or Officer Signature

\_\_\_\_\_  
Date

### PRIME/SUBCONTRACTOR

\_\_\_\_\_  
Principal or Officer (print name and title)

\_\_\_\_\_  
Principal or Officer Signature

\_\_\_\_\_  
Date



# FOR DEMO PURPOSES ONLY CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Your Agent or Broker	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
INSURED  Your Name	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Your Insurance Company	
	INSURER B: Your Insurance Company	
	INSURER C: Your Insurance Company	
	INSURER D: Your Insurance Company	
INSURER E: Your Insurance Company		
INSURER F: Your Insurance Company		
NAIC #		

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Include Independent Contractors GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	Y		XYZ-123	MM/DD/YY	MM/DD/YY	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Fire Damage Lgl Liab \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			ABC-345	MM/DD/YY	MM/DD/YY	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> DED <input type="checkbox"/> RETENTION \$	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	Y	LLL-555	MM/DD/YY	MM/DD/YY	EACH OCCURRENCE \$ As Needed AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input type="checkbox"/>	N / A	WCB-678	MM/DD/YY	MM/DD/YY	WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	Pollution Liability Builders Risk*			MCK-777	MM/DD/YY	MM/DD/YY	\$2 Million/\$2 Million Work Order Value

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

DASNY Contract No: 1000509999 CR \_\_\_\_\_  
Project Name: JOB ORDER CONTRACTING - REGION \_\_\_\_\_  
\*Builders Risk required for GOSR, OMH, OPWDD OASAS and NYCHA Projects  
The following are Additional Insureds as respect to this project: the Dormitory Authority-State of New York; the State of New York; ALL ENTITIES LISTED ON APPENDIX E. Proof of 30 Days Notice of Cancellation in favor of the Dormitory Authority of the State of New York is required for all insurance policies FOR NYCHA: NYCHA must also receive 30 Days Notice of Cancellation

## CERTIFICATE HOLDER

## CANCELLATION

Dormitory Authority- State of New York Attn: Risk Management 515 Broadway Albany, New York 12207	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Your Agent/Broker Representative

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
DASNY and all others as per the written contract	"All locations" or specific project name and address
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
DASNY and all others as per the written contract	"All locations" or specific project name and address
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

## Additional Insureds by Client

Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
\*On all projects/contracts

### **4201 Schools-** Contract Specific

Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **Albany Public Library**

Albany Public Library -161 Washington Avenue, Albany, NY 12210  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **Broome Community College**

Broome Community College- 907 Front Street Binghamton, New York, 13905  
County of Broome- 60 Hawley Street Binghamton, New York, 13902  
State University of New York- 353 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

### **Capital Center Youth Center**

Capital Center Youth Center -1 park place, Suite 102, Albany NY 12203  
Albany County - 112 State St, Albany, NY 12207  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **City of New York Court Facilities**

Unified Court System of New York- 25 Beaver Street, New York, NY 10004  
City of New York- 1 City Hall, New York, NY 10007  
NYS Court Facilities Capital Review Board - 25 Beaver Street, New York, NY 10004  
Office of Criminal Justice Coordinator -1 Centre Street NY, NY 10007  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **City University of New York (CUNY)**

City of New York- 1 City Hall, New York, NY 10007  
City University of New York- 217 E 42nd Street, New York, NY 10017  
City University Construction Fund- 217 E 42nd Street, New York, NY 10017  
Construction Manager (If applicable) - Contract Specific  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

### **County of Suffolk**

County of Suffolk -100 Veterans Memorial Highway, Hauppauge, New York, 11788  
New York State Office of Children and Family Services ("OCFS")- 52 Washington Street,  
Rensselaer, New York 12144  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

**County of Westchester (\*Special contract provisions required, contact Contract Support Services)**

County of Westchester – 148 Martine Avenue, White Plains, NY 10601

New York State Office of Children and Family Services (“OCFS”)- 52 Washington Street,  
Rensselaer, New York 12144

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

**Department of the Army - US Army Garrison, West Point**

Department of the Army - US Army Garrison, West Point - 2107 New South Post Road, West Point, NY

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

**Episcopal Health Services, Inc. (“EHS”)**

Episcopal Health Services, Inc. (“EHS”) -327 Beach 19th Street, Far Rockaway, New York 11691

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

**Fulton Montgomery Community College**

Fulton Montgomery Community College- 907 Front Street Binghamton, New York, 13905

County of Fulton- 223 W. Main Street Johnstown NY 12095

County of Montgomery- Building PO Box 1500 - 64 Broadway Fonda, NY 12068-1500

State University of New York- 353 Broadway, Albany, NY 12207

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

**Governor’s Office of Storm Recovery (GOSR)**

Governor’s Office of Storm Recovery (GOSR)- 64 Beaver Street, PO BOX 230, New York, NY 10004

Housing Trust Fund Corporation (HTFC)- 38-40 State Street, Albany, NY 12207

New York State Division of Housing and Community Renewal (DHCR)- 25 Beaver Street, 5th Floor,  
New York, New York 10004

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

**Mohawk Valley Community College**

Mohawk Valley Community College- 1101 Sherman Drive, Utica, New York, 13501

County of Oneida - 800 Park Avenue, Utica, New York, 13501

State University of New York- 353 Broadway, Albany, NY 12207

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

**Monroe Community College**

Monroe County - 39 W. Main St, Room 101. Rochester, NY 14614

Monroe Community College - 1000 E Henrietta Rd, Rochester, NY 14623

State University of New York- 353 Broadway, Albany, NY 12207

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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



## Additional Insureds by Client

### **New York City Department of Citywide Administrative Services**

NYC Department of Citywide Administrative Services – 1 Centre Street, NY, NY 10007

City of New York- 1 City Hall, New York, NY 10007

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **New York City Department of Environmental Protection**

NYC Department of Environmental Protection -59–17 Junction Boulevard, Flushing, NY 11373

City of New York- 1 City Hall, New York, NY 10007

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **New York City Health & Hospitals Corporation**

New York City Health & Hospitals Corporation - 125 Worth Street, New York, NY 10013

City of New York- 1 City Hall, New York, NY 10007

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **New York City Housing Authority**

New York City Housing Authority- 90 Church Street, 6<sup>th</sup> Floor, New York, NY 10007-2919, Attn: Risk Finance Department

New York City Housing Authority- Law Department, 250 Broadway, 9<sup>th</sup> Floor, New York, New York 10007, Attn: Assistant General Counsel for Corporate Affairs

Division of Housing and Community Renewal (DHCR) 25 Beaver Street, 5th Floor, New York, New York 10004

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **New York City Office of the County Medical Examiner (OCME)**

New York City Office of the County Medical Examiner (OCME) 520 First Avenue, New York, NY 10016

City of New York- 1 City Hall, New York, NY 10007

Office of Criminal Justice Coordinator -1 Centre Street NY, NY 10007

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **New York Public Library**

The New York Public Library, Astor, Lenox and Tilden Foundations ("NYPL")- 476 Fifth Avenue, New York, NY 10016

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

### **New York State Courts**

Office of Court Administration- 4 Empire State Plaza Suite 2001, Albany, NY 12223

NYS Court Facilities Capital Review Board - 25 Beaver Street, New York, NY 10004

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

### **New York State Department of Environmental Conservation (DEC)**

New York State Department of Environmental Conservation (DEC) 625 Broadway, Albany, NY 12207

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

**New York State Department of Health (DOH)**

New York State Department of Health- Corning Tower, Empire State Plaza, Albany, NY 12237  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

**New York State Division of Housing and Community Renewal (DHCR)**

New York State Division of Housing and Community Renewal (DHCR)- 25 Beaver Street, 5th Floor, New York, New York 10004  
Office of Resilient Homes and Communities - 60 Broad Street, New York, NY 10004  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

**New York State Education Department**

New York State Education Department 85 Washington Avenue, Albany, NY 12234  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

**New York State Homeless Housing and Assistance Corporation (“HHAC”)**

NYS Homeless Housing and Assistance Corporation (“HHAC”) -40 North Pearl St. 10-C Albany, NY 12243  
NYS Dept of Social Services - 162 Washington Ave, Albany, NY 12210  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207  
NYS Office of Temporary and Disability Assistance - 40 N Pearl St, Albany, NY 12207

**New York State Office of Children and Family Services (“OCFS”)**

New York State Office of Children and Family Services (“OCFS”)- 52 Washington Street, Rensselaer, New York 12144  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

**New York State Office of Parks, Recreation and Historic Preservation**

The New York State Office of Parks, Recreation and Historic Preservation - 625 Broadway Albany NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

**New York State Office of Temporary and Disability Assistance**

NYS Office of Temporary and Disability Assistance - 40 N Pearl St, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

**New York State Urban Development Corporation DBA Empire State Development**

NYS Urban Development Corporation DBA Empire State Development - 625 Broadway, Albany, NY 12207  
State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001  
Dormitory Authority of the State of New York - 515 Broadway, Albany, NY 12207

## Additional Insureds by Client

### **Office for People with Developmental Disabilities (OPWDD)**

Office for People with Developmental Disabilities (OPWDD)- 44 Holland Avenue, 5<sup>th</sup> Floor, Albany, NY 12208

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

### **Office of Alcoholism and Substance Abuse Services (OASAS)**

Office of Alcoholism and Substance Abuse Services (OASAS)- 1450 Western Avenue, Albany, NY 12203

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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

### **Office of Mental Health (OMH)**

Office of Mental Health (OMH)- 75 New Scotland Avenue, Albany, NY 12208

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **Roswell Park Cancer Institute Corporation**

Roswell Park Cancer Institute Corporation - Elm & Carlton Street, Buffalo, NY 14263

State University of New York- 353 Broadway, Albany, NY 12207

Hauptman-Woodward Medical Research Institute Inc. - 700 Ellicott St, Buffalo, NY 14203

NYS Urban Development Corporation DBA Empire State Development - 625 Broadway, Albany, NY 12207

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **Special Acts School District (SASD)** - Contract Specific

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

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

### **State University of New York**

State University of New York- 353 Broadway, Albany, NY 12207

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

State University Construction Fund - 353 Broadway Albany, New York 12246

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

### **State University of New York at Fashion Institute of Technology (FIT)**

SUNY Fashion Institute of Technology - 227 W 27th St, New York, NY 10001  
227 W 27th St, New York, NY 10001

City of New York their officers, employees and agents - 1 City Hall, New York, NY 10007

NYC Department of Education- 269 West 35th Street Room 702. New York, NY 10024

NYC School Construction Authority- 30-30 Thomson Ave, Queens, NY 11101

Board of Education of the City School District of the city of NY DBA NYC Department of Education-  
269 West 35th Street Room 702. New York, NY 10024

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

State University of New York- 353 Broadway, Albany, NY 12207

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

## Additional Insureds by Client

### **State University of New York at Stony Brook**

State University of New York at Stony Brook and their agents, officers and employees - 100 Nicolls Rd, Stony Brook, NY 11794

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

State University of New York- 353 Broadway, Albany, NY 12207

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

### **Ulster Community College**

Ulster Community College - 491 Cottekill Rd, Stone Ridge, NY 12484

County of Ulster - 244 Fair Street, PO Box 1800 Kingston, NY 12402-1800

State University of New York- 353 Broadway, Albany, NY 12207

State of New York- One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

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



## **Job Order Contracting (JOC)**

**(Contractor Name)**

**Region No. -- – (Trade)**

**Contract No: ----- Project No: 1000509999 - CR No: --**

---

**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000  
**NEW YORK CITY:** 28 Liberty Street, 55th Floor, New York, NY 10005 | 212-273-5000  
**BUFFALO:** 6047 Transit Road, Suite 103, East Amherst, Buffalo, NY 14051 | 716-884-9780  
**ROCHESTER:** 3495 Winton Place, Building C, Suite 1, Rochester, NY 14623 | 585-461-8400

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**DORMITORY AUTHORITY STATE OF NEW YORK**  
**WE FINANCE, DESIGN & BUILD**  
**NEW YORK'S FUTURE.**  
[www.dasny.org](http://www.dasny.org)

## Agreement

Job Order Contract No.   --    
Region No.   --   – (Trade) – (Contractor name)

A Contract, dated as of the \_\_\_\_\_, 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 \_\_\_\_\_, a **business corporation** organized and existing under the laws of the State of New York, hereinafter referred to as the **(Trade)** Contractor for the Work at various locations within **Region No.   --** as defined in the Form of Bid.

WITNESSETH: That the OWNER and the Contractor for the consideration named agree as follows:

1. The Contractor shall Provide and shall perform all Work of every kind and nature whatsoever required and all other things necessary to complete in a proper and workmanlike manner the work of **Job Order Contract No. ----- Region No. – (Trade) CR No. --** in strict accordance with the Contract Documents as defined in the General Conditions and shall perform all other obligations imposed on such Contractor by the Contract.
2. The Contractor agrees to Provide the Work of the Contract Documents and perform the tasks required by each individual Job Order issued pursuant to this Contract, which sum shall be deemed to be in full consideration for the performance by the Contractor of all the duties and obligations of such Contractor under the Contract using the following Adjustment Factors:

### Non-PLA Work

- a. Normal Working Hours: Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

- b. Other than Normal Working Hours: Contractor shall perform tasks during evening or night shift Monday to Friday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

### All Work

- c. Non Pre-Priced Work: Contractor shall perform tasks during day shift Saturday or Sunday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

### PLA Work

- d. Day Shift, Monday to Friday (as defined by the PLA): Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

- e. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Monday to Friday Hours (as defined by the PLA): Contractor shall perform tasks during evening or night shift Monday to Friday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

- f. Day Shift Saturday or Sunday (as defined by the PLA): Contractor shall perform tasks during day shift Saturday or Sunday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

- g. 2<sup>nd</sup> Evening or 3<sup>rd</sup> Night Shift Saturday or Sunday (as defined by the PLA): Contractor shall perform tasks during evening or night shift Saturday or Sunday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

- h. Holidays (as defined by the PLA): Contractor shall perform tasks during Holiday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:

**0.0000**

3. The Minimum Contract Value will be \$0.00. The Contractor is guaranteed to receive Job Orders totaling at least \$0.00 issued during the contract period. Funds will be obligated for the contract as Job Orders are issued.

The Estimated Annual Contract Volume is \_\_\_\_\_  
**Per Contract Year**. During the contract period, the Contractor may receive Job Orders that surpass the Estimated Annual Contract Volume. However, the Contractor is not guaranteed to receive this volume of Work. The Owner has no obligation to issue Job Orders in excess of the Minimum Contract Value.

4. The term of the Contract is one (1) year from the effective date of this Contract.

Option Period: Both the Owner and the Contractor must mutually agree to extend the Contract for an option period. The Contract includes three (3) Option Periods, and each term of the Option Period is one (1) year.

5. The Contractor shall commence and complete the work of each Job Order at the times specified in the Job Orders issued by the Owner and shall achieve Substantial Completion at the time specified in the Job Orders. The Contractor shall pay liquidated damages to the OWNER, as and if specified by the Owner for each Job Order for each and every day the Contractor fails to achieve Substantial Completion of the Work.

## Signatures

**Agreement May Be Signed in Counterparts.** This agreement 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.

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

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

By: \_\_\_\_\_

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

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

**(Contractor name)**  
**Address line 1**  
**Address line 2**

By: \_\_\_\_\_  
(Authorized Officer/Signatory)

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

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

If a **corporation**, signer must be President, Vice-President or other authorized officer.

If a **Limited Liability Company (LLC)**, signer must be a member or manager.

If a **Limited Liability Partnership (LLP)**, signer must be a partner.

If a **Limited Partnership**, signer must be a partner.

If a **general partnership**, signer must be a partner.

If a **sole proprietorship**, signer must be the owner.



**NEW YORK STATE ACKNOWLEDGEMENT – DASNY**

State of New York)

) SS

County of Albany)

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

\_\_\_\_\_  
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**

**NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant**

State of \_\_\_\_\_)

) SS

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

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

\_\_\_\_\_  
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**

### Iran Divestment Certification

1. By signing this certification and by signing Contract No. \_\_\_\_\_, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.
2. Contract means the contract between the Dormitory Authority of the State of New York ("DASNY") and \_\_\_\_\_ ("Contractor") for the Job Order Contract No. \_\_\_\_\_ Region No. \_\_\_\_ (Trade) CR \_\_\_\_.
3. This certification is part of Contract No. \_\_\_\_\_ and is subscribed by and affirmed by the person entering into Contract No. \_\_\_\_\_ as true under the penalties of perjury.

(Contractor name)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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



## **Job Order Contracting (JOC)**

**(Contractor Name)**

**Region No. -- – (Trade)**

**Contract No: ----- Project No: 1000509999 - CR No: --**

---

**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000  
**NEW YORK CITY:** 28 Liberty Street, 55<sup>th</sup> Floor, New York, NY 10005 | 212-273-5000  
**BUFFALO:** 6047 Transit Road, Suite 103, East Amherst, Buffalo, NY 14051 | 716-884-9780  
**ROCHESTER:** 3495 Winton Place, Building C, Suite 1, Rochester, NY 14623 | 585-461-8400

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**DORMITORY AUTHORITY STATE OF NEW YORK**  
**WE FINANCE, DESIGN & BUILD**  
**NEW YORK'S FUTURE.**  
[www.dasny.org](http://www.dasny.org)

## Agreement

Job Order Contract No.   --    
Region No.   --   – (Trade) – (Contractor name)

A Contract, dated as of the \_\_\_\_\_, 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 \_\_\_\_\_, a **business corporation** organized and existing under the laws of the State of New York, hereinafter referred to as the **(Trade)** Contractor for the Work at various locations within **Region No.   --** as defined in the Form of Bid.

WITNESSETH: That the OWNER and the Contractor for the consideration named agree as follows:

1. The Contractor shall Provide and shall perform all Work of every kind and nature whatsoever required and all other things necessary to complete in a proper and workmanlike manner the work of **Job Order Contract No. ----- Region No. – (Trade) CR No. --** in strict accordance with the Contract Documents as defined in the General Conditions and shall perform all other obligations imposed on such Contractor by the Contract.
2. The Contractor agrees to Provide the Work of the Contract Documents and perform the tasks required by each individual Job Order issued pursuant to this Contract, which sum shall be deemed to be in full consideration for the performance by the Contractor of all the duties and obligations of such Contractor under the Contract using the following Adjustment Factors:
  - a. Normal Working Hours: Contractor shall perform tasks during normal working hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:  
**0.0000**
  - b. Other than Normal Working Hours: Contractor shall perform tasks during evening or night shift Monday to Friday hours for the unit price set forth in the Construction Task Catalog (CTC) multiplied by the adjustment factor of:  
**0.0000**
  - c. Non Pre-Priced Work: Contractor shall perform Non Pre-Priced Work multiplied by the adjustment factor of:  
**0.0000**
3. The Minimum Contract Value will be \$0.00. The Contractor is guaranteed to receive Job Orders totaling at least \$0.00 issued during the contract period. Funds will be obligated for the contract as Job Orders are issued.

The Estimated Annual Contract Volume is \_\_\_\_\_  
**Per Contract Year**. During the contract period, the Contractor may receive Job Orders that surpass the Estimated Annual Contract Volume. However, the Contractor is not guaranteed to receive this volume of Work. The Owner has no obligation to issue Job Orders in excess of the Minimum Contract Value.

4. The term of the Contract is one (1) year from the effective date of this Contract.

Option Period: Both the Owner and the Contractor must mutually agree to extend the Contract for an option period. The Contract includes three (3) Option Periods, and each term of the Option Period is one (1) year.

5. The Contractor shall commence and complete the work of each Job Order at the times specified in the Job Orders issued by the Owner and shall achieve Substantial Completion at the time specified in the Job Orders. The Contractor shall pay liquidated damages to the OWNER, as and if specified by the Owner for each Job Order for each and every day the Contractor fails to achieve Substantial Completion of the Work.

SAMPLE

## Signatures

**Agreement May Be Signed in Counterparts.** This agreement 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.

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

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

By: \_\_\_\_\_

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

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

**(Contractor name)**  
**Address Line 1**  
**Address Line 2**

By: \_\_\_\_\_  
(Authorized Officer/Signatory)

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

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

If a **corporation**, signer must be President, Vice-President or other authorized officer.  
If a **Limited Liability Company (LLC)**, signer must be a member or manager.  
If a **Limited Liability Partnership (LLP)**, signer must be a partner.  
If a **Limited Partnership**, signer must be a partner.  
If a **general partnership**, signer must be a partner.  
If a **sole proprietorship**, signer must be the owner.

**NEW YORK STATE ACKNOWLEDGEMENT – DASNY**

State of New York)

) SS

County of Albany)

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

\_\_\_\_\_  
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**

**NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant**

State of \_\_\_\_\_)

) SS

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

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

\_\_\_\_\_  
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**

### Iran Divestment Certification

1. By signing this certification and by signing Contract No. \_\_\_\_\_, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.
2. Contract means the contract between the Dormitory Authority of the State of New York ("DASNY") and \_\_\_\_\_ ("Contractor") for the Job Order Contract No. \_\_\_\_\_ Region No. \_\_ (Trade) CR \_\_.
3. This certification is part of Contract No. \_\_\_\_\_ and is subscribed by and affirmed by the person entering into Contract No. \_\_\_\_\_ as true under the penalties of perjury.

(Contractor name)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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



PAYMENT BOND-JOC

KNOW ALL PERSONS BY THESE PRESENTS, that we:

\_\_\_\_\_ as Principal,  
(Legal title of the Contractor)

\_\_\_\_\_  
(Street, City, State, Zip Code)

and \_\_\_\_\_ as Surety,  
(Legal title of the Surety)

\_\_\_\_\_  
(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority of the State of New York, 515 Broadway, Albany, New York 12207, as Obligee, hereinafter called the Owner, in the amount of :

\_\_\_\_\_ and \_\_\_\_\_/100 Dollars  
(Written Dollar Amount)

( \$ \_\_\_\_\_ )  
(Figure Dollar Amount)

WHEREAS, CONTRACTOR has by written agreement dated \_\_\_\_\_

Entered into a Contract with Owner for Job Order Contracting: \_\_\_\_\_

Job Order, Supplemental Job Order or Change Order Number: \_\_\_\_\_

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Job Order, Supplemental Job Order or Change Order Order (hereinafter "Job Order"), then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however, to the following conditions:

- A. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Job Order, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Job Order.
- B. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Payment Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
- C. No suit or action shall be commenced hereunder by any claimant:

PAYMENT BOND-JOC

1. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal above named, within one hundred twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where the Principal maintains an office or regularly conducts the Principal's business, or at Principal's residence or served on Principal in any manner in which legal process may be served in the State of New York.
  2. Except as provided in section 220-g of the New York State Labor Law, after the expiration of one (1) year following the date on which the public improvement has been Completed and Accepted by the Owner; however, if any limitation embodied in this Payment Bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  3. Other than in a New York State court of competent jurisdiction in and for the county in which the Job Order, or any part thereof, was to be performed, or in the United States District Court for the district in which the project, or any part thereof, was to be performed, and not elsewhere.
- D. The penal sum of this Payment Bond is in addition to any other bond furnished by the Contractor and in no way shall be impaired or affected by any other bond.
- E. The amount of this Payment Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

IN THE PRESENCE OF:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Email Address)

PAYMENT BOND-JOC

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PAYMENT BOND  
IF A CORPORATION

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_  
(street, city, state, zip code)  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PAYMENT BOND  
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known 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.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides at:

\_\_\_\_\_  
(street, city, state, zip code)  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

SAMPLE

PERFORMANCE BOND – JOC

KNOW ALL PERSONS BY THESE PRESENTS, that we:

\_\_\_\_\_ as Principal,  
(Legal title of the Contractor)

\_\_\_\_\_  
(Street, City, State, Zip Code)

and \_\_\_\_\_ as Surety,  
(Legal title of the Surety)

\_\_\_\_\_  
(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority of the State of New York, 515 Broadway, Albany, New York 12207, as Oblige, hereinafter called the Owner, in the amount of:

\_\_\_\_\_ and \_\_\_\_\_/100 Dollars  
(Written Dollar Amount)

( \$ \_\_\_\_\_ )  
(Figure Dollar Amount)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated \_\_\_\_\_  
Entered into a Contract with Owner for Job Order Contracting:

Contract Number: \_\_\_\_\_

Job Order or Supplemental Job Order Number: \_\_\_\_\_

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

- A. If the Contractor well and fully performs the Job Order or Supplemental Job Order (hereinafter “Job Order”), the Surety and the Contractor shall have no obligation under this Performance Bond, except to participate in conferences, if any, in connection with Owner’s consideration of its exercise of its powers as provided in paragraph B1.
- B. If there is no Owner Default, the Surety's obligation under this Performance Bond shall arise after:
1. The Owner has notified the Contractor and Surety that the Owner is considering declaring a Contractor Default; and
  2. The Owner has declared a Contractor Default.
- C. When the Owner has satisfied the conditions of paragraph B, the Surety shall, at the Owner’s option, and at the Surety's expense take one the following actions within twenty (20) days after written notice is sent by the Owner to the Surety declaring a Contractor Default:

## PERFORMANCE BOND – JOC

1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Job Order.
  2. Undertake to perform and complete the Job Order itself, through its agents or through independent contractors.
  3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Job Order, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Payment Bond and Performance Bond issued on the Job Order, with a contract price between the Owner and contractor equal to the Balance of the Job Order Price, and pay to the Owner the amount of damages as described in paragraph E in excess of the Balance of the Job Order incurred by the Owner resulting from the Contractor Default.
  4. Tender to the Owner the amount of this Performance Bond.
- D. If the Surety does not proceed within the time prescribed in paragraph C , the Surety shall be deemed to be in default on this Performance Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.
- E. After the Owner has declared a Contractor Default, and when the Surety acts under paragraph C1, C2, or C3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Job Order, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Job Order. When the Surety acts under paragraph C1, C2 or C3 above, the Owner will agree to pay the Balance of the Job Order Price to the Surety in accordance with and subject to the terms of the Contract or to a contractor selected to perform and complete the Job Order in accordance with and subject to the terms of the contract between the Owner and contractor. When the Surety acts under paragraph C1 or C2 above, the Surety's obligation to perform and complete the Job Order is not limited by the amount of this Performance Bond and the Balance of the Job Order Price. When the Surety acts under paragraph C1, C2 or C3 above or fails to act under paragraph C, the Surety, in addition to its other obligations, is obligated without duplication for:
1. Additional legal, Design Professional, Consultant and delay costs resulting from the Contractor Default, or resulting from the actions or failure to act of the Surety under paragraph C.
  2. Liquidated damages, or if no liquidated damages are specified in the Job Order, actual damages for loss of beneficial use of the Work caused by delayed performance or non-performance of the Contractor.
- F. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Job Order, and the Balance of the Job Order Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Performance Bond to any person or entity other than the Owner or its successors or assigns.
- G. This Performance Bond and the Surety's obligations shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the Contract, Job Order or the Work to be performed thereunder, or by the payment thereunder before the time required therein, or by any waiver of any provision or condition precedent or subsequent thereof, or by settlement or compromise of any claim or dispute related there to, or by assignment, subcontract or other transfer of the Work or any part thereof, or of any monies due or to become due thereunder; and the Surety hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers.

## PERFORMANCE BOND – JOC

- H. Any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to the Surety as though done or omitted to be done by or in relation to the Principal.
- I. The obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other rearrangement of the Principal for the benefit of creditors.
- J. The Owner's acceptance of this Performance Bond shall in no way, for any purpose, limit or be claimed to limit the liability of the Principal under the Contract and Job Order, but such liability shall remain in all respects to the same extent as is provided for in the Contract and Job Order.
- K. Notice to the Surety and the Contractor shall be mailed or delivered to the address shown on the signature page. Notice to the Owner shall be mailed or delivered to the address shown in the preamble.
- L. Definitions:
  - 1. **Balance of the Job Order Price** - The total amount payable by the Owner to the Contractor under the Job Order or Supplemental Job Order after all proper adjustments (increases and reductions) allowed by the Contract have been made, including, but not limited to, allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract and Job Order.
  - 2. **Contract** - The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents as defined in the General Conditions of the Contract and all changes, modifications, amendments, additions, and alterations thereto after the date of this Performance Bond.
  - 3. **Contractor Default** - Failure of the Contractor, which has neither been remedied nor waived, to perform the Job Order or otherwise to comply with the terms of the Contract and Job Order.
  - 4. **Owner Default** - Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Contract and Job Order or to perform and complete or comply with the other material terms thereof.
- M. The penal sum of this Performance Bond is in addition to any other bond furnished by the Contractor and in no way shall be impaired or affected by any other bond.
- N. Any suit under this Performance Bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under this Contract for the Work of the Job Order.

**[Remainder of this Page Intentionally Left Blank – Signature Page to Follow]**

PERFORMANCE BOND – JOC

Signed as of this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

IN THE PRESENCE OF:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Phone Number & FAX Number)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Email Address)



ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PERFORMANCE BOND  
IF A CORPORATION

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides at: \_\_\_\_\_  
(street, city, state, zip code)  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_,  
the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF CONTRACTOR EXECUTING PERFORMANCE BOND  
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known 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.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides at: \_\_\_\_\_  
(street, city, state, zip code)  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_,  
the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

**D A S N Y**

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

# **JOB ORDER CONTRACTING PROGRAM**

## **CONSTRUCTION GENERAL CONDITIONS**

**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000

**BUFFALO:** 6047 Transit Road, Suite 103, East Amherst, NY 14051 | 716-566-4400

**NEW YORK CITY:** 28 Liberty Street, Fl 55, New York, NY 10005 | 212-273-5000

**ROCHESTER:** 3495 Winton Place, Building C, Suite 1, Rochester, NY 14623 | 585-461-8400

**DASNY**

**WE FINANCE, DESIGN & BUILD  
NEW YORK'S FUTURE.**

[www.dasny.org](http://www.dasny.org)

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## **ARTICLE 1 -- DEFINITIONS**

### **Section 1.01 - Definitions**

The following terms as used in the Contract Documents shall be defined as follows:

**Addendum or Addenda** – Additional provisions of the Contract Documents issued in writing prior to the receipt of bids.

**Alternate** – Scope(s) of Work stated in the Contract documents to be added or deducted from the Contractor's base bid amount for alternate labor, materials and/or methods of construction.

**Allowance** – A sum of money set aside in the Price Proposal or Change Order and included in the Contractor's lump sum price for the Job Order to account for an aspect of work included in the Detailed Scope of Work that is not fully defined or cannot be fully quantified at the time the Price Proposal is being prepared. .

**Application for Payment** – A Contractor's written billing request, on a form:

- A. prepared by the Owner from the Schedule of Values approved by the Owner;
- B. completed by the Contractor;
- C. adjusted by the Owner; and
- D. signed by the Contractor,

requesting partial or full payment for partial or full performance of the Contract.

**Beneficial Occupancy** – The stage in the performance of the Work of a Job Order prior to Substantial Completion when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize such portion of the Work for its intended use, evidenced by the Notice of Beneficial Occupancy executed by the Owner following approval from the Authority Having Jurisdiction. Beneficial Occupancy may or may not allow for completion of outstanding punch-list items, as required by the Contract Documents. Notice of Beneficial Occupancy requires that the designation portion of Beneficial Occupancy Work function in a safe, reliable and warrantable manner.

**Change Order** – Written notice, in a standard Owner's form, to the Contractor, signed by the Contractor and executed by the Owner, ordering changes in the Work by altering, adding or deducting from the Work of the Job Order through a new or changed Detailed Scope of Work, in accordance with General Conditions Article 7 - Changes in the Work

**Claim** - A demand by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, an extension of time, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

**Client** - The entity for whom the Dormitory Authority is performing services, including subsidiaries, agents, related corporations, or fiduciaries of the entity.

**Construction Manager** - A natural person, partnership, limited liability company, corporation, or other legal entity regularly engaged in management of construction projects, and so designated by the Owner.

**Consultant** - A natural person, partnership, limited liability company, corporation, or other legal entity providing architectural, engineering, construction management, testing, inspection, commissioning, or other professional services, and so designated by the Owner.

**Contract** - The agreement between the Owner and the Contractor consisting of the Contract Documents.

**Contract Amendment** – A written instrument, signed by an authorized officer of the Dormitory Authority and an authorized officer of Contractor, amending, modifying, changing, or supplementing the Contract.

**Contract Documents** - The Notice to Bidders, Information for Bidders, Form of Bid, Agreement, Payment Bond, Performance Bond, General Conditions, General Requirements, Drawings, Specifications, Addenda, , Construction Task Catalogue®, Contract Amendments, all provisions of law deemed to be included in the Contract and, when in reference to a specific Project, any Job Orders, Detailed Scope of Work, Request for Proposals, Change Orders and Supplemental Job Orders issued in connection with such Project.

**Contractor** - A natural person, partnership, limited liability company, corporation, or other legal entity with whom the Owner enters into the Contract to perform the Work.

**Completion and Acceptance** - The stage in the performance of the Work when all Work required to be performed by the Contract Documents, except any Work that may be required in the future by:

- A. any warranty or guarantee in the Contract Documents;
- B. General Conditions Article 6 – Subcontracts, Sections 6.01 E through I;
- C. General Conditions Article 14 - Protection of Persons and Property; or
- D. General Conditions Article 15 – Insurance and Bonds,

is complete in accordance with the Contract Documents, evidenced by the Notice of Completion and Acceptance executed by the Owner. Completion and Acceptance follows or may be concurrent with Physical Completion.

**Design Professional** - A natural person, partnership, limited liability company, corporation, or other legal entity providing architectural or engineering professional services, and so designated by the Owner.

**Disputed Work Directive** - Written directive, in a standard Owner’s form, from and executed by the Owner to the Contractor directing the Contractor to proceed with the Work described in the Disputed Work Directive in accordance with General Conditions Article 10 – Claims and Disputes.

**Dormitory Authority** - Dormitory Authority of the State of New York, a public benefit corporation established by the laws of the State of New York with its principal office located at 515 Broadway, Albany, New York, 12207-2964.

**Emergency Notice to Proceed** – Written notice, signed by the Owner, to the Contractor, that directs the Contractor to start performance of the Work in response to an emergency as set forth in Section 1A.07 (F).

**Extra Work** - Any work in addition to the Work initially required to be performed by the Contractor pursuant to the Detailed Scope of Work set forth in a Job Order.

**Facility** – the operating unit of the Client where the Site is located.

**False Claim** – Any Claim which is, either in whole or part, false or fraudulent.

**False Representation** – This action takes place when a person has knowledge of the value of the work and materials supplied, performed, or proposed (the “Information”) constituting the Claim, Change Order, or Application for Payment and either:

- A. acts in deliberate ignorance of the truth or falsity of the Information or
- B. acts in reckless disregard of the truth or falsity of the Information.



***Forced Change Order*** –Written notice, in a standard Owner’s form, to the Contractor, without the Contractor’s signature and executed by the Owner, changing the Contract Documents in accordance with General Conditions Article 7 – Changes in the Work.

***Furnish*** - To deliver to the Site ready for installation.

***Hazardous Material*** – any substance (gas, liquid, or solid) or agent (biological, chemical, radiological, physical, or having two or more of the preceding characteristics) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors, including but not limited to heavy metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, herbicides, dioxins, biological wastes, carcinogens, asbestos or any substance containing asbestos, polychlorinated biphenyls, lead, urea formaldehyde, explosives, radionuclides, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials, and any item defined as a hazardous, special, or toxic material, substance, or waste under any Hazardous Material Law, including, but not limited to, the NYS Environmental Conservation Law and Title 6 of the New York Code of Rules and Regulations.

***Hazardous Material Laws*** – collectively, any present federal, state or local law, including all valid amendments, relating to public health, safety, or the environment, including without limitation, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1215 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq.; the Atomic Energy Act, 42 U.S.C. §2201 et seq.; the NYS Environmental Conservation Law; the NYS Labor Law; the NYS Public Health Law; and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter enacted or promulgated under any such statute.

***Install*** - To unload at the delivery point at the Site and perform every operation necessary to establish secure mounting and correct operation at the proper location.

***Means and Methods of Construction*** - Labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by the Contract Documents.

***Notice of Beneficial Occupancy*** – Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner and delivered to the Contractor prior to Substantial Completion, that certain Work of the Contract Documents, identified in such Notice of Beneficial Occupancy, satisfies the criteria for Beneficial Occupancy and will be occupied or utilized by the Owner or Client.

***Notice of Completion and Acceptance*** – Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work required to be performed by the Contract Documents, except any Work required by any warranty or guarantee in the Contract Documents, satisfies the criteria for Completion and Acceptance.

***Notice of Physical Completion***- Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Physical Completion.

***Notice of Substantial Completion*** - Written notice, in a standard Owner’s form, to the Contractor, executed by the Owner, that the Work of the Contract Documents satisfies the criteria for Substantial Completion and constitutes the start of the guarantee period.

**Notice to Proceed** – Written notice, signed by the Owner, to the Contractor, directing the Contractor to start performance of the Work of a Job Order, Change Order or Supplemental Job Order. A Notice to Proceed cannot change the Contract amount or the date to achieve Substantial Completion. A Notice to Proceed can change only the General Requirements, the Drawings, or the Specifications. The Owner, in its discretion, may issue the Notice to Proceed to the Contractor through the text of a duly authorized Job Order, Change Order or Supplemental Job Order. Issuance of the Notice to Proceed, whether through the text of a duly authorized Job Order, Change Order or Supplemental Job Order or through a separate written notice, is a condition precedent to starting performance of the Work.

**NYS** – New York State

**Other Contractor(s)** – The one or more natural persons, partnerships, limited liability companies, corporations, or other legal entities who have entered into a contract with the Owner to perform work (including services) at or near the Site, identified in the Contract Documents or in writing by the Owner, including, but not limited to, contractors, Construction Managers, Consultants, and Design Professionals. Other Contractors does not include the Contractor.

**Owner** - Dormitory Authority of the State of New York.

**Owner's Representative** - A natural person, partnership, limited liability company, corporation, or other legal entity so designated by the Owner to act on behalf of the Owner. See General Conditions Section 2.3 for limitations and further provisions on the Owner's Representative.

**Physical Completion** – The stage in the performance of the Work when all Work to be performed at the Site, except any Work that may be required in the future by any warranty or guarantee in the Contract Documents, is complete in accordance with the Contract Documents, evidenced by the Notice of Physical Completion executed by the Owner. Physical Completion precedes or may be concurrent with Completion and Acceptance. Physical Completion requires that all punch-list work be completed by the Contractor such that the Contractor no longer is required to perform Work at the Site. All insurances must remain in effect until the Contractor achieves Physical Completion and the Contractor is required to submit certified payrolls through the date of Notice of Physical Completion.

**Project** - The work at or near the Site(s) carried out pursuant to the Contract Documents and one or more other contracts.

**Project Management Program** – The software program used by the Owner to manage, monitor, and oversee performance of the Contract.

**Provide** - To Furnish and Install the Work complete in place and ready for its intended use.

**Resume Work Order or Directive** – Written notice, signed by the Owner, to the Contractor, to recommence or continue Work of the Contract Documents.

**Schedule of Values** – a form provided by the Owner, completed by the Contractor, and submitted to the Owner for review and written approval; the completed, approved form establishes a minimum level of allocation of the Contract amount among the items of Work to formulate the Contractor's billing requests.

**Site** - The area(s) within the Contract limit, as indicated by the Contract Documents.

**Stop or Suspend Work Order or Directive** - Written notice, signed by the Owner, to the Contractor, to cease or hold Work of the Contract Documents.

**Subcontract** - An agreement between the Contractor and Subcontractor for Work in connection with a Job Order.

**Subcontractor** - A natural person, partnership, limited liability company, corporation, or other legal entity under contract with the Contractor, or under contract with any Subcontractor, to perform any portion of the Work, or to provide any labor, material, equipment, or service in connection with a Job Order.

**Substantial Completion** – The stage in the performance of the Work when all Work is sufficiently complete in accordance with the Contract Documents so the Owner or Client can occupy or utilize the Work for its intended use, evidenced only by the Notice of Substantial Completion executed by the Owner. Issuance of a temporary certificate of occupancy or a temporary approval for occupancy does not establish Substantial Completion. Work at the Site (Physical Completion), and Work required by the Contract Documents (Completion and Acceptance) may still be required.

**Unit Price** – The price for one measured unit (e.g.: cu. ft., sq. foot, linear ft., etc.) of completed Work activity which includes all labor, material, and equipment attributable to that scope of Work. For Pre-priced Tasks, the unit price shall be the price published in the Construction Task Catalog® for a specific task comprised of the labor, equipment, and material costs to accomplish that specific task. For Non-Pre-Priced Tasks, the Unit Price shall be based upon estimated quantities specified in the Detailed Scope of Work and will be paid based upon the pricing included in the Vendor proposal accepted by the Owner for the Non Pre-priced Task(s).

**Unmanned Aircraft System (UAS or DRONES)** - An aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) operated without the possibility of direct human intervention from within or on the aircraft.

**Work** - All obligations explicitly and implicitly imposed upon the Contractor by the Contract Documents.

## **Section 1.02 – Additional Definitions for Job Order Contracting Projects**

The following terms as used in the Contract Documents shall be defined as follows:

**Adjustment Factor** – One or more adjustments to the Unit Prices included in the Construction Task Catalog® and updated annually. The Adjustment Factor is a component, along with Unit Price and Quantity, of the formula used to calculate the compensation to be paid to the Contractor for the Unit Price Task. The front-end section of the Construction Task Catalog®, entitled “Using the Construction Task Catalog®”, identifies the costs covered by the Adjustment Factor. The Adjustment Factors are set forth in the Contractor’s Form of Bid.

**Completion and Acceptance of a Job Order** – the Owner’s written determination that all work of a Job Order has been completed in accordance with the Job Order and Contract Documents.

**Construction Task Catalog® (CTC)** - The annual list of specific construction related tasks together with a specific unit of measurement and a Unit Price, also referred to as the Unit Price Book. The Construction Task Catalog® is developed by the Gordian Group for the Dormitory Authority and revised and updated annually. The Construction Task Catalog® for an individual Job Order is the Construction Task Catalog® for the year in which the Request for Proposal for the individual Job Order is issued to the Contractor, which may be amended or modified at any time.

**Detailed Scope of Work** – The form, and the related drawings, specifications, and writings incorporated therein, which together set forth the specific requirements and items of work to be accomplished by the Contractor pursuant to an individual Job Order.

**Job Order** – The document that sets forth the Detailed Scope of Work to be accomplished, the price to be paid therefore, and the Job Order Completion Time for a specific project.

**Job Order Amount** – The amount the Owner will pay the Contractor for completion of a Job Order, performance of the Detailed Scope of Work, and compliance with the Contract Documents.

**Job Order Completion Time** – The period of time allotted to the Contractor to achieve Completion and Acceptance of a Job Order.

**Joint Scope Meeting** – A meeting at the Site to discuss the proposed work before the Detailed Scope of Work is completed.

**Minimum Contract Value** – the minimum dollar value of the sum of the Job Order Amounts of the Job Orders that can be ordered under this Contract during the base term of the Contract.

**Non-Pre-priced Task (NPP)** – A task or item of work required by a Detailed Scope of Work not included in the Construction Task Catalog® which task or item of work is included in a Job Order or Supplemental Job Order. Non-Pre-Priced Tasks shall not include Allowances and other costs incurred on a time and material or actual expenses basis.

**Normal Working Hours** – The hours from 7:00 am to 5:00 pm Monday to Friday except legal holidays.

**Notice of Low Bid Status**- Written notice, signed by the Owner, to the Contractor, which accepts the Contractor's Form of Bid for the Contract and transmits the Agreement and other documents to the Contractor for execution.

**Other Than Normal Working Hours** – The hours from 5:00 pm to 7:00 am Monday to Friday and any time on Saturday, Sunday, and holidays.

**Pre-priced Task** – A task or item of work required by a Detailed Scope of Work and included in the Construction Task Catalog® for which a Unit Price has been established.

**Price Proposal** – Also referred to as the Proposal. The Contractor-prepared document quoting a lump sum, fixed price, and schedule for completion of the Detailed Scope of Work included in the Request for Proposal. The Proposal, when appropriate, shall also contain pricing for drawings, sketches, specifications, required permits or certificates, catalog cuts, technical data, samples, M/WBE participation information, the associated Gordian fee, the bond premiums for the Performance and Payment Bonds required under Section 15.07 of this Contract for Contractor Proposals of one hundred thousand dollars (\$100,000.00) or more or where the Contractor's Proposal plus Job Order Amount(s) under this Contract are cumulatively one hundred thousand dollars (\$100,000.00) or more, and such other documentation as the Owner requires, in its sole discretion, for a specific Job Order.

**Request for Proposal (RFP)** – The document issued by the Owner which formally requests the Contractor to prepare a Price Proposal for a Detailed Scope of Work.

**Supplemental Job Order (Supplemental)**– Written notice, in a standard Owner's form, to the Contractor, executed by the Owner, changing the Contract Documents in accordance with Section 1A.09 of this Contract. Supplemental Job Orders shall not materially alter or change the scope or nature of a Job Order.

## **ARTICLE 1A – JOB ORDER CONTRACTING**

### **Section 1A.01 - Work Scope and Pricing**

- A. The Contractor shall perform the Work described in the Detailed Scope of Work referenced in each Job Order. The Contractor may be required to perform Work at various locations within the geographic limits defined in the Contract. Notwithstanding the foregoing, Owner and Contractor may mutually agree to the assignment of Work in another geographic region.
- B. The price of each Job Order shall be:
  1. The sum of the following calculation for each Pre-priced Task: the Unit Price multiplied by the quantity, multiplied by the appropriate Adjustment Factor; plus

2. The total of all Non-Pre-Priced Tasks set forth in the Job Order; plus
  3. The total of allowable and approved reimbursable expenses; plus
  4. The amount of the premiums for the Performance Bond and Payment Bond if required under Section 15.07.
- C. The Contractor shall obtain all approvals, permits and third-party inspections required for the Work and shall prepare all required filings, requests and related documentation. If the Contractor is required to pay fees under this section, including but not limited to building permit fees, and fees to the City of New York or other governmental agency, the amount of said fee paid by the Contractor for which a receipt is obtained shall be paid without mark-up as a reimbursable expense. The cost of expediting services or equipment use fees are not reimbursable. The Contractor shall obtain all final approvals for the Work, in the form of such certificates that are required by all governmental agencies having jurisdiction over the Work.
- D. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings required for filing. Said services shall be performed by a licensed design-professional and the fee for such services for which a receipt is obtained shall be paid without mark-up as a reimbursable expense.

#### **Section 1A.02 - Minimum Contract Value**

- A. The Minimum Contract Value is \$0, as indicated in the Information for Bidders.
- B. The Contractor is not guaranteed any specific Job Order or contract value.

#### **Section 1A.03 - Contract Term**

- A. Base Term: The Base Term of this Contract shall commence on the effective date of the Notice of Contract Award. The Base Term shall be for one year. A Job Order is issued when the Dormitory Authority submits a written Job Order to the Contractor to perform Work. Job Orders may not necessarily be completed during the term of the Contract. Where Job Order(s) remains uncompleted at the expiration of the Base Term of this Contract, all terms of the Contract Documents will nonetheless apply to such Job Order(s) with full force and effect.
- B. Option Terms: There are three (3) one-year option periods. The Dormitory Authority may, at its sole discretion, extend its right to issue and/or implement Job Orders to Contractor for three (3) additional one-year option periods, provided the Dormitory Authority gives Contractor written notice of such option at least forty-five (45) days prior to the expiration of the Base Term or prior option period. The term of each option period is one year. In the event Owner does not exercise an option period, Contractor shall continue to perform all pending Job Order Work to completion as set forth in this Contract.
- C. Supplemental Job Orders: Notwithstanding anything contained herein to the contrary, Owner may issue Supplemental Job Orders for field conditions, incidental additional work, credits or back charges subsequent to the expiration of the Base Term and any option period.

#### **Section 1A.04 – Annual Update of the Construction Task Catalogs®**

- A. The Construction Task Catalog® issued as part of the bid documents shall be in effect as of the date of Contract award. The Construction Task Catalog® shall be updated annually by the Gordian Group on or about August 1<sup>st</sup> of each successive year thereafter. The Contractor shall use the Construction Task Catalog® in effect on the date the Request for Proposals is issued by DASNY and shall not delay the submission of a Price Proposal to incorporate pricing in an updated Construction Task Catalog.®



- B. The Adjustment Factors for this Contract are set forth below. When Preparing a Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.
- C. The Adjustment Factors will be applied as follows:
  - 1. Normal Working Hours: Monday to Friday 7:00 am to 5:00 pm except holidays.
  - 2. Other Than Normal Working Hours: Monday to Friday 5:00 pm to 7:00 am and all-day Saturday, Sunday and holidays.
  - 3. Non-Pre-priced Task.
  - 4. Such other Adjustment Factors set forth in the applicable Notice to Bidders.
- D. The Adjustment Factors bid shall remain in effect for the Base Term and any option periods for the Contract.
- E. The Contractor's Adjustment Factors shall not be adjusted during the term of this Contract.
- F. Should the Contractor submit a Price Proposal with inaccurate Adjustment Factors, the Contractor shall not be entitled to compensation in excess of the amount due as calculated in accordance with the correct Adjustment Factors.

#### **Section 1A.05 – Scope Development**

- A. If a need for performance by the Contractor under this Contract arises, the Owner shall notify the Contractor by issuing a Notice of Joint Scope Meeting. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 1. The general scope of the work needed;
  - 2. Methods and alternatives for accomplishing the work;
  - 3. Access to the site and protocol for admission;
  - 4. Hours of operation;
  - 5. Staging area;
  - 6. Requirements for catalog cuts, technical data, samples and shop drawings;
  - 7. Requests for additional information;
  - 8. Construction schedule and Substantial Completion date;
  - 9. Liquidated damages;
  - 10. Specific quality requirements for equipment and materials;
  - 11. The presence of Hazardous Materials; and
  - 12. The date when the Proposal is due.
  - 13. The names of the Owner's project manager, the Contractor's superintendent and project manager, the Client's representative(s), and the Design Professional's project manager.
  - 14. Opportunities for MWBE and SDVOB participation and the submission of utilization plans.
- B. Upon completion of the Joint Scoping Meeting, the Owner shall prepare, or cause to be prepared, a draft Detailed Scope of Work together with any sketches, drawings, and specifications required to describe the work to be accomplished by the Job Order. The Owner shall provide the draft Detailed Scope of Work to the Contractor and other parties designated by the Owner for comments. When a Detailed Scope of Work acceptable to the Owner has been prepared, the Owner shall issue to the Contractor a Request for Proposal. In response, the Contractor shall prepare a Proposal for the work under consideration based on the Detailed Scope of Work.
- C. The Contractor does not have the right to refuse to perform any task or Work included in a particular Job Order. Any refusal to perform Work included in a Job Order is a cause for termination of this Contract under General Conditions Section 11.01 – Termination for Cause.

- D. The Owner may, at its option, include quantities in the Detailed Scope of Work to help define the Detailed Scope of Work. If the actual required quantities are not included, not known, cannot be determined at the time the Detailed Scope of Work is prepared, or if the Contractor and the Owner cannot agree on the quantities required, the Owner shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

#### **Section 1A.06 – Proposal Preparation**

A. The Contractor shall prepare each Proposal in accordance with the following:

1. **Pre-priced Tasks:** The Contractor shall identify each task required for the Detailed Scope of Work listed in the Construction Task Catalog® currently applicable to the Contract and for each task identified, determine the quantity of such task required to complete the Detailed Scope of Work.
2. **Non-Pre-priced Tasks:** The Owner shall identify each task required for the Detailed Scope of Work not listed in the Construction Task Catalog® currently applicable to the Contract and for each such task:
  - a. Provide complete specifications and technical data, including, but not limited to, task content, support drawings, task cost data, quality control requirements and inspection requirements.
  - b. The extended price for a Non-Pre-Priced Task shall be determined by multiplying the price for a single unit of the task by the quantity required. The price in the Proposal shall be determined by multiplying the extended price by the Contractor's Non-Pre-Priced Task Adjustment Factor.
  - c. After a Non-Pre-priced Task is used for three separate Job Orders, and if the Owner approves, the price for such task shall be established as a permanent Pre-priced Task which will be utilized without application of any additional Adjustment Factors and will no longer require price justification.
3. The Owner's determination of the scope of a task, the appropriateness of the task for a Job Order, and the classification of a task as Pre-priced or Non-Pre-Priced shall be final, binding and conclusive as to the Contractor.
4. The Contractor's Proposal shall include at a minimum:
  - a. Pre-Priced Tasks;
  - b. Non-Pre-priced Tasks;
  - c. Cost of premiums for Performance Bond and Payment Bond if required under Section 15.07 hereof;
  - d. Catalog cuts, technical data or samples;
  - e. List of all anticipated Subcontractors (which includes suppliers);
  - f. Estimated MWBE & SDVOB utilization percentage and dollar amounts;
  - g. Proposed construction schedule (including notification schedule for Hazardous Material remediation) showing achieving Substantial Completion by the date in the Detailed Scope of Work.
  - h. Any other items required by the Owner in the Request for Proposal.
5. The Contractor shall submit the Proposal by the date specified in the Request for Proposal. The Owner may reject any incomplete Proposal. The complexity and urgency of the Job Order will determine the time for preparation of the Contractor's Proposal. Failure of the Contractor to deliver a Proposal within the time allowed on two or more occasions is cause for termination of this Contract under General Conditions Section 11.01 – Termination for Cause.

6. Minimum Set-up Charge: For Job Orders where the total value is less than the Minimum Set-Up Charge. The Minimum Set-Up Charge will be eight (8) hours of the Labor rate for the required trade(s) plus one (1) day of rental for required equipment plus the material cost from the Construction Task Catalog®.
7. If the Contractor will perform the task with its own forces, Owner reserves the right to require Contractor to submit three (3) independent quotes for all material and equipment to be installed. If the Work or task is to be subcontracted, the Owner reserves the right to require the Contractor to submit three (3) independent quotes from Subcontractors as justification of any Work or task subcontracted. Contractor shall not submit a quote from a Subcontractor (which includes suppliers) who the Contractor is not prepared to use. The Owner may require additional quotes if a Subcontractor is unacceptable or if the Owner, in its sole and exclusive discretion, determines the prices are unreasonable. If so, required by Owner, the final Job Order price shall be determined by multiplying the lowest acceptable proposal by the Non-Pre-Priced (NPP) formula.
8. The adjustment for reimbursable expenses shall be 1.0000.
9. Allowances and other costs for Work incurred on a time and material actual expenses basis and will be paid in accordance with Article 7- Change Conditions.

#### **Section 1A.07 – Review of the Proposal and Issuance of a Job Order**

- A. The Owner shall evaluate the Proposal and proposed tasks and compare them with the Owner's cost estimate of the Detailed Scope of Work to determine the reasonableness of the Contractor's Proposal, including the nature and quantity of the tasks proposed.
- B. The Owner reserves the right to reject a Proposal for any reason. The Owner also reserves the right not to issue a Job Order if the Owner determines it is in the Owner's best interest not to issue a Job Order or if the Proposal exceeds the Owner's estimate. If the Owner does not issue a Job Order for any reason, the Contractor shall have no Claim against the Owner for the cost of preparing a Proposal. Contractor's submission of two or more Proposals that substantially exceed the Owner's estimate or that have substantially unrealistic construction schedules is a cause for termination of this Contract under General Conditions Section 11.01 – Termination for Cause.
- C. By submitting a signed Proposal to the Owner, the Contractor agrees to complete the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted and within the time proposed. It is the Contractor's responsibility to include the necessary tasks and quantities in the Proposal prior to delivering the Price Proposal to the Owner.
- D. Upon acceptance of the Contractor's Proposal, the Owner or the Owner's representative shall contact the Contractor to provide notice of such acceptance. If Performance and Payment Bonds are required, the Contractor shall provide such bonds, in accordance with Section 15.07, to the Owner within five (5) work days of the date of Contractor receives notice of acceptance of its Proposal. Upon Owner's receipt of such bonds acceptable to the Owner, the Owner shall issue the Job Order and Notice to Proceed. Where Section 15.07 applies, receipt from Contractor of such Performance and Payment Bonds acceptable to Owner is a strict condition precedent to the issuance of the Job Order. If Performance and Payment Bonds are not required, the Owner shall issue the Job Order and Notice to Proceed concurrently.
- E. Each Job Order provided to the Contractor shall incorporate the Detailed Scope of Work and set forth the Job Order Amount and the Job Order Completion Time. All clauses of the Contract apply to each Job Order. A signed copy of each Job Order shall be provided to the Contractor. The Owner may indicate in the text of a Job Order issued by the Owner and delivered to the Contractor that such Job Order shall constitute its Notice to Proceed.



- F. In the event that Owner determines an immediate emergency response is necessary the Contractor shall be required to follow alternative procedures as established by the Owner including, but not limited to, the issuance of an Emergency Notice to Proceed. The Contractor shall begin work pursuant to such Emergency Notice to Proceed or as otherwise directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Owner, in its sole discretion, maintains the option to, at any time after the Contractor has received the Emergency Notice to Proceed, submit the aforementioned Request for Proposal to the Contractor, and the Contractor shall respond by submitting its Proposal to the Owner as soon as practicable so that the Owner may issue a Job Order with Detailed Scope of Work. In the Owner's sole discretion, the Contractor shall be compensated in accordance with either (1) the Construction Task Catalog® and Non-Pre-Priced Tasks as if the Work had been ordered under Section 1A.01 of this Article, or (2) in accordance with Article 7 – Changes in the Work.
- F. For Life/Safety issues where a response is required within 24 hours the Minimum Set-Up Charge will be eight ( 8) hours of the Labor rate for the required trade(s) plus one day of rental for required equipment plus the material cost from the Construction Task Catalog®.

### **Section 1A.08 – JOC System License**

#### **A. Job Order Contracting Software:**

The Owner selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for their JOC program. The Gordian JOC System includes Gordian's proprietary eGordian® and Gordian Cloud JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Job Order Price Proposals, Change Orders, subcontractor lists, and other requirements specified by the Owner. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following JOC System License.

#### **B. JOC System License:**

1. Gordian has issued a JOC System License to the Owner, which permits the Owner to allow the Contractor to use Gordian's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information"). The Owner hereby grants to the Contractor, and the Contractor hereby accepts for the term of this Contract or Gordian's Contract with the Owner, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's Proprietary Information to be used for the sole purpose of executing Contractor's responsibilities to the Owner under this Contract ("License Agreement"). The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's JOC Applications and support documentation, Construction Task Catalog®, training materials and other Gordian provided proprietary materials. In the event this Contract expires or terminates as provided herein, or Gordian's Contract with the Owner expires or terminates, the License Agreement shall terminate, and the Contractor shall return all Proprietary Information in its possession to Gordian.
2. The License Agreement may be terminated in the event of: (1) any breach of a material term of this Agreement by the Contractor which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.
3. The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor.

4. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Owner, this JOC System License shall take precedence.

#### **Section 1A.09 – Supplemental Job Orders - Changes in the Work**

- A. In addition to use of the Change Order process as set forth in Article 7 — Change In the Work, Owner may, in writing, without invalidating the Contract, order changes in the Work by altering, adding or deducting from the Work of the Job Order through a new or changed Detailed Scope of Work followed by issuing a Supplemental Job Order. Supplemental Job Orders shall not materially alter or change the scope or nature of the Project for which a Job Order is issued. No alteration to the Supplemental Job Order form shall be accepted and no payment shall be due the Contractor until said Supplemental Job Order is duly executed by the Owner. If the Job Order Completion date is affected by a Supplemental Job Order, an increase or decrease to the duration, in days, shall be included in the Supplemental Job Order. .
- B. The Owner may process a Forced Change to the Work if the Contractor disagrees with the changes in the Work and/or the resultant proposed change in Job Order Amount and/or Job Order Completion Time. The Contractor must comply with the Forced Change Order and continue with the Work subject to Article 10 - Claims and Disputes.
- C. Unless otherwise provided for in Article 7 – Changes in the Work, all extra work shall be paid for at the Unit Prices set forth in the Construction Task Catalog® or as Non-Pre-Priced Tasks. Credits for the deletion of Work shall be priced in the same manner. No claims for extra work will be allowed unless the Contractor strictly complies with Article 10 – Claims and Disputes.
- D. Extra work or credit work that is identified on a Project after a Job Order has been issued will be carried out by issuing a Supplemental Job Order or Change Order. The issuance of a Supplemental Job Order or Change Order shall be in the Owner's sole discretion.

### **ARTICLE 2 – CONTRACT DOCUMENTS**

#### **Section 2.01 - Captions**

The table of contents, titles, captions, headings, running headlines, and marginal notes contained herein and in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect the interpretation of the provisions to which they refer.

#### **Section 2.02 – Electronic Data Transfer**

- A. Electronic data includes, but is not limited to, all digital versions of any Contract Document, all digital files produced by mechanical, facsimile, electronic, magnetic, digital or other programs, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including but not limited to, word processing documents, spreadsheets, database files, charts, graphs, drawings, specifications, outlines, electronic mail, personal digital assistant messages, instant messenger messages, PDF files, PRF files, batch files, ASCII files, DWG files and any other type of files now or hereafter allowed by Owner.
- B. The Owner reserves the right to implement an electronic payment program for payments due the Contractor. Prior to implementation, the Owner, in writing, shall notify the Contractor one hundred twenty (120) calendar days prior to the effective date of the electronic payment program. Commencing on or after the electronic payment effective date, all payments, due the Contractor, shall only be rendered electronically, unless payment by paper check is authorized in writing by the Owner. Commencing on or after the electronic payment effective date, the Contractor, further acknowledges and agrees that the Owner may withhold payments, if the Contractor has not complied with the Owner's policies and procedures relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the Owner.

- C. Electronic data produced in connection with the Contract is proprietary information of the Owner and to be treated as confidential and not to be disclosed to, or shared with, others outside the limits of the Contract without the express written consent of the Owner. The Owner makes no warranty, express or implied, as to the accuracy of the information transferred.
- D. The Contractor shall pay, on behalf of the Owner, any loss which the Owner becomes legally liable to pay as a result of a claim by any person or entity against the Contractor or Owner, which results directly from an act, error, or omission of the Contractor in the provision of electronic data in respect to the Contract.

### **Section 2.03 - Owner**

- A. The Contract constitutes the entire agreement and understanding between the Contractor and the Owner with respect to the Project and supersedes all prior agreements, arrangements and understandings, and all trade custom and trade usage, and the construction of any provision of the Contract shall not be affected by the wording of any other agreement, whether between the Contractor and the Owner or involving other parties. The Contract may not be amended, modified, supplemented, or changed in any way except in accordance with General Conditions Article 7 – Changes in the Work, General Conditions Section 1A.09 – Change in the Work, or a Contract Amendment. The legal relationship between the Owner and the Contractor shall be governed solely by the Contract and no rights shall arise on any other basis, including but not limited to, oral agreement, partial performance, estoppel, conduct of the parties, course of conduct or any other course of dealing involving the Project or any other project. The meaning and intent of the Contract Documents shall be interpreted solely by the Owner.
- B. The Owner shall give all orders and directions contemplated under the Contract relative to the execution of the Work. The Owner shall determine the amount, quality, and acceptability of the Work and shall decide all questions which may arise in relation to said Work. The Owner's estimates and decisions shall be final and binding except as otherwise expressly provided herein.
- C. The Owner may, at its sole and exclusive discretion, waive certain provisions of the Contract Documents. Such waiver shall only be done by written instrument signed by a duly authorized officer of the Owner, and any such waiver shall apply solely in accordance with its terms and shall not act as a waiver of any provision of the Contract Documents, or estoppel against the enforcement thereof, in connection with any subsequent or separate event involving the Project or other projects.
- D. Any differences or conflicts concerning performance which may arise between the Contractor and Other Contractors performing work for the Owner shall be analyzed and resolved by the Owner as warranted by the circumstances. The Owner's exercise of discretion in this regard shall be sole and exclusive and its decision concerning such differences and conflicts shall be final and binding.
- E. The Owner may act through an Owner's Representative designated as such in writing by the Owner. Unless otherwise designated by the Owner, the Owner's Representative is the Owner's employee assigned to the Project as the project manager. Unless otherwise stated in writing by the Owner, the Owner's Representative is not an authorized officer of the Owner, does not have authority to approve a Labor Rate Worksheet on behalf of the Owner, does not have authority to waive the requirement for a narrative and fragnet schedule of General Conditions Section 7.01 C. 4, does not have authority to waive any provision of the Contract Documents and does not act for the Owner for General Conditions Article 15 – Insurance and Bonds. Unless otherwise stated in writing by the Owner and notwithstanding the other provisions of this paragraph, the Owner's Representative does have authority to issue a direction to attend a meeting in accordance with General Conditions Section 4.04, a Notice to Proceed in accordance with General Conditions Section 7.01 and a Disputed Work Directive in accordance with General Conditions Section 10.01. The Owner may change the Owner's Representative and the scope of her, his or its duties by written notice to the Contractor in accordance with General Conditions Section 2.04. The Owner's Representative's signature by itself on a Change Order is not execution of a Change Order by the Owner. See General Conditions Section 7.01 A. 5 for the requirements for execution of a Change Order by Owner.

## **Section 2.04 - Notice and Service Thereof**

- A. Any notice to the Contractor from the Owner relative to any part of the Contract shall be in writing and service considered complete when said notice is sent or delivered in person to the Contractor or its authorized representative, at the street address, postal address or email address given by the Contractor in the Form of Bid. The Contractor may change any of these addresses by written notice to the Owner's Procurement Unit, 515 Broadway, Albany, New York 12207 - 2964; such change shall not be effective until Contractor receives from the Owner's Procurement Unit a written acknowledgement that the change has been received.
- B. Any notice from the Contractor to the Owner required by any part of the Contract shall be in writing and shall be sent or delivered to the Owner's Representative at the street address, postal address or email address for the Owner's Representative given in the Notice to Bidders. The Owner may change the Owner's Representative or any of these addresses by written notice to the Contractor. If any part of the Contract shall require the Contractor to provide notice to any other employee or unit of the Owner, the notice to such employee or unit is in addition to, and does not replace, the notice to the Owner's Representative. Notice to the Owner may be delivered by certified mail, overnight delivery by a nationally recognized courier or, if an email address is provided, email. The Owner's Representative will endeavor to provide a written acknowledgment of receipt of the notice but any failure to provide such written acknowledgment shall not be a breach of the Contract, shall not in any way alter the Contractor's obligation to provide timely notice and shall not in any way alter any of the other obligations of the Contractor under the Contract.
- C. For all notices from the Contractor to the Owner required by any part of the Contract, the Contractor shall have the burden of proving the Owner's receipt of the notice.

## **Section 2.05 - Nomenclature**

Materials, equipment, or other Work not defined or specified in the Contract but described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Contract.

## **Section 2.06 - Invalid Provisions**

If any term or provision of the Contract Documents or the application thereof to any natural person, partnership, limited liability company, corporation or other legal entity or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to natural persons, partnerships, limited liability companies, corporations or other legal entities 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 Documents shall be valid and be enforced to the fullest extent permitted by law. It is the intent of the Owner and the Contractor that all provisions of the Contract shall be construed to be valid under applicable law and shall be enforced to the maximum extent possible.

## **Section 2.07 – Interpretation of Contract Documents**

- A. Should any provision in the Contract Documents be in conflict or inconsistent with the General Conditions or supplements thereto, the General Conditions or supplements thereto shall govern.
- B. Figured dimensions shall take precedence over scaled dimensions. Larger scale Drawings shall take precedence over smaller scale Drawings. Latest Addenda shall take precedence over previous Addenda and earlier dated Drawings and Specifications.

- C. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity of material or more onerous provision in the Owner's judgment shall govern, regardless of cost, unless the Owner directs otherwise in writing. In each conflict, the Owner, in its sole and exclusive discretion, shall determine whether the quality, quantity or onerous provision method will be used to resolve the conflict.
- D. Drawings and Specifications are complementary. Anything shown on the Drawings and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Drawings, shall have the same effect as if shown or mentioned in both.
- E. The term "materials" includes "supplies".
- F. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa.

### **Section 2.08 - Copies of Contract Documents**

The Owner may furnish to the Contractor up to three (3) paper copies and one electronic (PDF) copy of the Contract Documents without charge. Additional sets may be furnished at the costs of reproduction and mailing.

## **ARTICLE 3 -- SITE CONDITIONS**

### **Section 3.01 - Subsurface or Site Conditions Found Different**

- A. In submitting a Proposal, the Contractor acknowledges that the Job Order Amount set forth in its Proposal includes such provisions which the Contractor deems sufficient for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract Documents, or borings, reports, rock cores, foundation investigation reports, topographical maps, or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of the Proposal.
- B. The Owner assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to the Contractor.
- C. Should the Contractor encounter subsurface or site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Contractor shall immediately give written notice to the Owner of such conditions and shall not disturb said conditions until authorized to do so by the Owner in writing.
- D. Subsurface or site conditions found materially differing from those that could have been reasonably anticipated may be cause for change to the Job Order Amount and Job Order Completion Time. This determination will be made at the sole and exclusive discretion of the Owner.

### **Section 3.02 - Verifying Dimensions and Conditions**

- A. The Contractor shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. If said dimensions or conditions are found to conflict with the Contract Documents, the Contractor immediately shall refer said conflict to the Owner in writing. The Contractor shall comply with any revised Contract Documents.
- B. During the performance of the Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment and proceed with the fabrication to meet field conditions.



- C. The Contractor shall review all Contract Documents to determine exact location of all Work and verify spatial relationships of all the Work. Any question concerning said location or spatial relationships shall be submitted in a manner approved by the Owner.
- D. Special locations for equipment, pipelines, ductwork, and other such items of the Work, where not dimensioned on plans, shall be coordinated with affected Other Contractors.
- E. The Contractor shall be responsible for the proper fitting of the Work in place.

### **Section 3.03 - Surveys**

Unless otherwise expressly provided in the Contract Documents, the Owner shall furnish the Contractor all surveys of the property necessary for the Work, but the Contractor shall lay out the Work.

## **ARTICLE 4-- CONTRACTOR**

### **Section 4.01 - Representations of Contractor**

The Contractor represents and warrants:

- A. That it is financially solvent and is experienced in and competent to perform the Work, and has the staff, workers, equipment, subcontractors, and suppliers to complete the Work within the time specified for the Contract amount.
- B. That it is familiar with all federal, state, and local laws, codes, ordinances, orders, rules, and regulations which may affect the Work, the Contractor, or the Project.
- C. That all temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and that said construction will not injure any person or damage any property.
- D. That it has carefully examined the Contract Documents and the Site, and from the Contractor's own investigations is satisfied as to the nature and materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or items which may affect the Work.
- E. That it is satisfied that the Work can be performed and completed as required in the Contract Documents and warrants that it has not been influenced by any oral statement or promise of the Owner or the Design Professional.
- F. That to the best of Contractor's knowledge, there are no pending or threatened suits, proceedings, judgments, rulings, or orders by or before any court or any governmental agency or arbitrator that could reasonably be expected to affect materially and adversely:
  - 1. the financial condition or operations of the Contractor;
  - 2. the ability of the Contractor to perform its obligations hereunder; or
  - 3. the legality, validity, or enforceability of this Contract.
- G. That Contractor is a duly organized and validly existing entity of the type described in the recital clauses of the Agreement and is in good standing under the laws of the jurisdiction of its formation; it has the legal right, power, and authority and is qualified to conduct its business and to execute and deliver this Contract and perform its obligations under this Contract; and all regulatory authorizations have been obtained and will be maintained, as necessary, for it to perform legally its obligations under this Contract.

- H. That executing and performing this Contract are within Contractor's powers; that executing and performing this Contract has been duly authorized by all necessary action on the Contractor's part; and that such actions do not and will not violate any provision of law or any rule, regulation, order, writ, judgment, decree, or other determination presently in effect applicable to Contractor or its governing documents.
- I. That this Contract constitutes the Contractor's legal, valid, and binding obligation, enforceable against it in accordance with this Contract's terms, subject to applicable bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally, and general equitable principles, to the discretion of the court before which proceedings to obtain the same may be pending.
- J. That Contractor is in good standing with any union with craft labor on the Site for part or all the Work of this Contract or the work of the Project.
- K. That Contractor is experienced in the methods of design, engineering, installation, management, and construction contemplated for the Work of this Contract and for contracts of this nature, scope magnitude and quality and that the Contractor understands the complexity involved in this type of Contract and the necessity to coordinate its Work with appropriate governmental agencies, the Owner, and the Other Contractors.
- L. That Contractor is fully informed as to all existing conditions and limitations, including local workforce/labor working arrangements and the continuous, regular, and uninterrupted operations of the Facility.
- M. That Contractor has had the opportunity to consult with or has consulted with legal counsel of its choice before entering into this Contract.
- N. That any breach of any of the representations and warranties of this General Conditions Section 4.01, any failure of the Contractor to familiarize itself with the Contract Documents, the Facility, the Site or the Project or any lack of knowledge on the part of the Contractor of any existing or foreseeable condition or conditions at the Site reasonably inferred from the Contract Documents which create difficulties or hindrances in the execution of the Work shall constitute a conclusive and binding determination by the Contractor that resolving any adverse impact of such breach, failure or lack of knowledge does not constitute Extra Work and a waiver by the Contractor of all Claims for additional compensation or damages or time to achieve Substantial Completion as a result of the breach, failure or lack of knowledge.

#### **Section 4.02 - Errors or Discrepancies**

The Contractor shall examine the Contract Documents thoroughly before commencing the Work and report any errors or discrepancies to the Owner, in writing, within fifteen (15) calendar days of discovery. The Owner shall not be responsible for costs, damages or delays due to the Contractor's failure to comply with the requirements of this General Conditions Section 4.02.

#### **Section 4.03 - Coordinated Composite Drawings**

- A. The Contractor shall prepare coordinated composite drawings clearly showing how the Work of the Contractor is to be performed in relation to the work of Other Contractors, prepare scaled drawings and sections in the same digital software program, version, and operating system as the original Contract Drawings or in an operating system approved by the Owner.

- B. If, and only if, required by the Information for Bidders for the Contract, the Contractor shall run a conflicts and coordination check utilizing the Project Drawings within a three-dimensional software program of the Contractor's choice to limit the number of physical conflicts that may occur during construction. Failure to run such a conflicts and coordination check or to resolve conflicts and coordination issues identified as a result of such a check prior to the initiation of the Work on Site shall constitute a:
1. conclusive and binding determination by the Contractor that resolution of the conflicts does not involve Extra Work; and
  2. waiver by the Contractor of all Claims for additional compensation, damages, or time to achieve Substantial Completion as a result of the existence of physical conflicts.

#### **Section 4.04 - Meetings**

The Contractor shall attend all meetings required by the Contract Documents and all meetings when directed to attend by the Owner. The Contractor shall be represented at all meetings by the on-Site superintendent described in General Conditions Section 4.05 A who shall attend the meetings in person unless the Owner, in writing prior to the meeting, directs otherwise. If the Owner directs, the Contractor shall be represented either by the project management personnel of General Conditions 4.05 B or by an authorized officer of Contractor; in each case, the project management personnel or the authorized officer shall attend the meetings in person. The Owner, in its sole and exclusive discretion, shall determine the time, date, location, and purpose of the meeting. The purpose of a meeting includes, but is not limited to, Project progress, submittal status, Change Orders, site logistics, coordination, inspections, testing, safety reviews, or anything which the Owner determines is useful for administration or performance of the Contract or the Project.

#### **Section 4.05 - Supervision by Contractor**

- A. The Contractor shall provide full-time competent supervision for the duration of the Contract and Job Order(s). During the course of on-Site Work, the Contractor shall provide a full-time on-Site superintendent who shall have full authority to act for the Contractor at all times. The superintendent shall read, write, and speak English fluently, as well as communicate with the Contractor's workers and the workers of all Subcontractors.
- B. The Contractor shall also provide competent project management personnel in addition and superior to the full-time on-Site superintendent who shall also have full authority to act for the Contractor at all times except such project management personnel cannot modify or rescind any action of the full-time on-Site superintendent directed to the Owner without the Owner's written consent.
- C. If at any time the supervisory staff is not satisfactory to the Owner, the Contractor shall, if directed in writing by the Owner, immediately replace such supervisory staff with other staff satisfactory to the Owner at no additional cost to the Owner.
- D. The Contractor shall remove from the Work any employee of the Contractor or of any Subcontractor when so directed in writing by the Owner.

#### **Section 4.06 – Project Scheduling**

- A. The Contractor shall provide a project scheduler, experienced in critical path method (CPM) scheduling. The scheduler's experience and credentials shall be submitted in writing to the Owner for review and acceptance prior to proceeding with scheduling of the Work. The Owner may withdraw its acceptance of the project scheduler at any time thereafter for failure to perform in accordance with the Contract. The Contractor shall provide a replacement scheduler and submit the replacement's experience and credentials in writing to the Owner for review and acceptance as soon as possible. The replacement scheduler shall be at no additional cost to the Owner.



- B. Using the software required by the Owner, the Contractor shall prepare, maintain, and revise the Project CPM schedule to plan and monitor the progress of all Project operations, in accordance with the Contract Documents. See the General Requirements for further details.
- C. Construction activities shall be interrelated on a single Project CPM schedule that represents the entire Project, including the entire Job Order duration. The Contractor shall utilize the critical path method of network calculation to generate the Project CPM schedule and shall utilize the time-scaled precedence diagram method to show the Project CPM Schedule. The Project CPM Schedule shall utilize calendar days for the time scale. The Contractor shall ensure all logic constraints are identified between the Work of the Job Order, the work of Other Contractors and Owner's work prior to approval of the Project CPM schedule. See the General Requirements for further details.
- D. The Owner may reject any proposed Project CPM schedule, any proposed updated Project CPM schedule or any proposed recovery Project CPM schedule if the Owner, in its sole and exclusive discretion, finds the proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule defective for any reason, including but not limited to:
  - 1. Defective logic;
  - 2. Excessive use of constraints;
  - 3. Activity durations that are inconsistent with actual or available workforce;
  - 4. The appearance of an effort to manipulate the schedule so that responsibility for an adverse impact is associated with a natural person or entity other than the natural person or entity responsible for the adverse impact; or
  - 5. Lacking executive summary and/or narrative.
- E. If a proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule is rejected by the Owner, the Owner will notify the Contractor in writing of the rejection and the reason or reasons for the rejection. Contractor shall submit a new proposed Project CPM schedule, proposed updated Project CPM schedule or proposed recovery Project CPM schedule with the defect or defects corrected at no cost to the Owner within two (2) weeks of the Owner's written rejection.
- F. Review comments made by the Owner on the proposed Project CPM schedule, any proposed updated Project CPM schedule or any proposed recovery Project CPM schedule shall not relieve the Contractor from compliance with requirements of the Contract Documents. The Contractor shall be responsible for scheduling, sequencing, and performing the Work to comply with the requirements of the Contract Documents.
- G. The Contractor expressly understands and agrees that no additional compensation shall be paid for any alterations to Contractor's planned construction sequence to accommodate the Project CPM schedule requirements, any updated Project CPM schedule or any recovery Project CPM schedule pursuant to the Contract. Failure to include any element of work required for the performance of the Work shall not excuse the Contractor from completing all the Work required within the applicable completion date of each phase in the Contract Documents regardless of the Owner's approval of the Project CPM schedule, any updated Project CPM schedule or any recovery Project CPM schedule.
- H. The Owner may withhold payments, in whole or in part, if the Contractor fails to provide an acceptable project scheduler, replacement project scheduler, Project CPM schedule, updated Project CPM schedule, recovery Project CPM schedule or other schedule information or reports in accordance with requirements of the Contract.

#### **Section 4.07 - Worker Identification and Site Access Control**

- A. All employees of the Contractor and every Subcontractor shall comply with all site access control, safety and security procedures prescribed by the Owner which may include, but are not limited to, the wearing of Owner issued identification badges, ingress and egress through controlled entry and exit points, and use of card readers or other electronic identity verification devices. Contractor cannot authorize any one to enter the Site, except Contractor's and Subcontractor's employees and persons delivering materials or equipment to Contractor or a Subcontractor, without the prior written consent of the Owner.
- B. All employees of the Contractor and every Subcontractor, prior to entering the Site for the first time, shall obtain an identification badge if issued by the Owner and produce to the Owner a valid form of government-issued photo identification and furnish other background information, including but not limited to the following:

- Full Name
- Last four (4) digits of Social Security Number
- Home Address (#/Street/Apt./City/Zip)
- Contractor/Subcontractor Name
- Job Classification
- Union Local Affiliation, if any

The Owner recognizes that certain information requested above constitutes personal information and will take all reasonable steps to ensure the security and confidentiality of this information as required by law.

- C. All employees of the Contractor and every Subcontractor shall visibly display on their person, while entering and on the Site, an identification badge if issued by the Owner. In the event said identification badge has not been issued by the Owner, all employees of the Contractor and every Subcontractor shall produce a valid form of government-issued photo identification promptly upon request of the Owner. Failure to display such identification or to produce such identification in the manner as prescribed by the Owner may result in the employee's non-admittance to or immediate removal from the Site. The Owner will send written confirmation to the Contractor confirming the action taken, if requested by the Contractor.

#### **Section 4.08 - Related Work**

- A. The Contractor should examine the Contract Documents for Work of its Contract and any related work of other contracts, to ascertain the relationship of its Work to any related work of other contracts.
- B. The Owner may contract with a Design Professional, Construction Manager, or other Consultants to provide services to the Owner. The services enumerated in consultant contracts are for the benefit of the Owner who may choose to utilize any or all of said services. The Contractor has no privity of contract with the Design Professional, Construction Manager, or any other Consultant which contracts with the Owner and should not assume that all of the services enumerated in said contracts will be provided.
- C. The Contractor shall adhere to all of the requirements specified or communicated by the Design Professional in performing delegated design work required by the Contract Documents.

#### **Section 4.09 – Coordination with Separate Contracts**

- A. The Owner may award other contracts for work which may proceed simultaneously with the execution of the Work. The Contractor shall coordinate the Contractor's operations with those of Other Contractors as directed by the Owner. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.

- B. The Contractor shall take those steps reasonably necessary to keep itself informed of the progress and workmanship of Other Contractors and any subcontractors of Other Contractors and shall notify the Owner in writing immediately of lack of progress or defective workmanship on the part of Other Contractors or any subcontractors of Other Contractors, where said delay or defective workmanship may interfere with the Contractor's operations.
- C. Failure of a Contractor to keep so informed and failure to give written notice of lack of progress or defective workmanship by Other Contractors or any subcontractors of Other Contractors shall be construed as acceptance by the Contractor of said progress and workmanship as being satisfactory for proper coordination with the Work.
- D. Where the Contractor shall perform Work in close proximity to work of Other Contractors or any subcontractors of Other Contractors, or where there is evidence that Work of the Contractor may interfere with work of Other Contractors or any subcontractors of Other Contractors, the Contractor shall assist in arranging space conditions to make satisfactory adjustment for the performance of the Work. If the Contractor performs Work in a manner that causes interference with the work of Other Contractors or any subcontractors of Other Contractors, the Contractor shall make changes necessary to correct the condition at no additional cost to the Owner.
- E. The Contractor shall render any assistance which the Owner may require with respect to any claim or action in any way relating to the Work including, without limitation, review of claims, preparation of technical reports and participation in negotiations, without any additional compensation therefor.

#### **Section 4.10 - Cooperation with Other Contractors**

- A. During the performance of the Work, Other Contractors may be engaged in performing work. The Contractor shall coordinate the Contractor's Work with the work of said Other Contractors in such a manner as the Owner may direct.
- B. If the Owner determines that the Contractor is failing to coordinate the Work with the work of Other Contractors as the Owner has directed:
  - 1. The Owner shall have the right to withhold any payments due under the Contract until the Contractor complies with the Owner's direction; and
  - 2. The Contractor shall assume the defense and pay on behalf of the Owner any and all claims or judgments or damages and any costs to which the Owner may be subjected or which the Owner may suffer or incur by reason of the Contractor's failure to promptly comply with the Owner's directions, including, but not limited to attorney's fees, expert fees, and costs. Notwithstanding the foregoing, the Owner retains the right to select its own counsel for such defense, the cost of which is to be paid by the Contractor.
- C. If the Contractor notifies the Owner, in writing, that an Other Contractor on the Site is failing to coordinate its work with the Work, the Owner shall investigate the charge. If the Owner finds it to be true, the Owner shall promptly issue such directions to the Other Contractor with respect thereto as the situation may require. The Owner shall not be liable for any damages suffered by the Contractor by reason of the Other Contractor's failure to promptly comply with the directions so issued by the Owner, or by reason of an Other Contractor's default in performance.
- D. Should the Contractor sustain any damage through any act or omission of any Other Contractor having a contract with the Owner or through any act or omission of any subcontractor of said Other Contractor, the Contractor shall have no Claim against the Owner for said damage.

- E. Should any Other Contractor having, or which shall have a contract with the Owner sustain damage through any act or omission of the Contractor or through any act or omission of a Subcontractor, the Contractor shall reimburse said Other Contractor for all said damages and shall indemnify and hold the Owner harmless from all such claims by said Other Contractor, including, but not limited to attorney's fees, expert fees, and costs. Notwithstanding the foregoing, the Owner retains the right to select its own counsel for such defense, the cost of which is to be paid by the Contractor. The Owner's right to indemnification hereunder shall in no way be diminished, waived, or discharged, by its recourse to assessment of liquidated damages as provided in the Contract Documents, or by the exercise of any other remedy provided by the Contract or law.
- F. The Owner cannot guarantee the responsibility, efficiency, unimpeded operations, or performance of any contractor. The Contractor acknowledges these conditions and shall bear the risk of all delays including, but not limited to, delays caused by the presence or operations of Other Contractors and subcontractors of Other Contractors and delays attendant upon any Project CPM schedule approved by the Owner and the Owner shall not incur any liability by reason of any delay.

## **ARTICLE 5 -- MATERIALS AND LABOR**

### **Section 5.01 - Contractor's Obligations**

- A. The Contractor shall comply with all the terms of the Contract Documents and complete all the Work in a good worker-like manner, within the time specified in the Contract and Job Order(s) and to the satisfaction of the Owner.
- B. The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, permits, insurance, temporary structures and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether incorporated or to be incorporated in the Work or not incorporated in the Work.
- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- D. Any labor, materials or means whose employment, or utilization during the course of the Contract may tend to or in any way cause or result in strike, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Contractor, its Subcontractors or material suppliers, or by any of the trades working in or about the Site, or by Other Contractors, their subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by the Contractor of this requirement may in the sole judgment of the Owner be considered a default by the Contractor under the Contract and a basis for the Owner to take action against the Contractor as set forth in General Conditions Article 11 – Termination or Suspension or such other action as the Owner may deem proper.
- E. The Contractor and each Subcontractor shall comply with all applicable local, state, and federal laws, rules and regulations and all applicable construction standards issued by the Joint Commission and other accrediting agencies and organizations.
- F. The Contractor and each Subcontractor shall comply with all applicable Hazardous Material Laws. The Contractor shall provide the Owner the Safety Data Sheets for any Hazardous Materials or hazardous substances brought on the Site by the Contractor or a Subcontractor at least fifteen (15) calendar days prior to the delivery of such materials to the Site. Contractor shall identify to Owner at least fifteen (15) calendar days in advance the quantities of all "Chemicals of Interest" listed under the Chemical Facility Anti-Terrorism Standards of the Homeland Security Appropriations Act of 2007 that will be brought onto the Site.
- G. Contractor shall provide the necessary information and training to its employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site and shall cause each of its Subcontractors to provide the necessary information and training to the Subcontractor's employees on

each Hazardous Material and hazardous substance to which they may be exposed on the Site. Upon request of the Owner, Contractor shall provide the Owner with proof, satisfactory to the Owner, that Contractor's employees and all Subcontractors' employees have received the necessary information and training.

- H. Contractor shall not transport, store or use, and shall prohibit Subcontractors from transporting, storing or using, any construction materials or equipment (whether or not totally enclosed) containing Hazardous Materials including, but not limited to, asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde in connection with this Contract; provided, however, Contractor and Subcontractors may transport, store and use the following substances: lead, natural gas, gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), grease(s), sealant(s), combustible gases, form oil(s), solvent(s), adhesives, paints, coatings, and all other materials that are used or consumed in or during construction or testing of the Work and its constituent systems and components in quantities reasonably necessary to perform the Work, if transported, stored and used in accordance with applicable laws including, but not limited to, those laws related to the implementation and utilization of spill containment, transport systems and storage vessels and facilities.
- I. Any Hazardous Materials and hazardous substances brought to or stored on or at the Site shall require specific, prior written authorization from Owner and, as a condition to such authorization, Contractor shall provide Owner with the Material Safety Data Sheet covering any Hazardous Material or hazardous substance furnished under or otherwise associated with the Work (including the construction equipment). Contractor shall maintain on the Site, at all times, complete records, and inventories, including Safety Data Sheets, of Hazardous Materials and hazardous substances described in this General Conditions Section 5.01 that are being used by it or its Subcontractors, or any persons for whose actions on the Site Contractor is responsible.

#### **Section 5.02 - Means and Methods of Construction**

- A. Unless otherwise provided in the Contract Documents, the Contractor shall choose the Means and Methods of Construction subject to the Owner's right to reject, at any time, the Means and Methods of Construction proposed by the Contractor, which in the opinion of the Owner:
  - 1. Will constitute or create a hazard to the Work or to persons or property;
  - 2. Will not produce finished Work in accordance with the terms of the Contract;
  - 3. Will be detrimental to the overall progress of the Project; or
  - 4. Will have an adverse impact on the operations of the Client.
- B. The Owner's failure to exercise its right to reject the Contractor's Means and Methods of Construction shall not relieve the Contractor of its obligation to complete the Work; the Owner's exercise of its right to reject the Contractor's Means and Methods of Construction shall not create a Contractor's or Subcontractor's cause of action for damages against the Owner.

#### **Section 5.03 - Contractor's Title to Materials**

- A. No materials for the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by any other party. The Contractor warrants that the Contractor has full, good, and clear title to all materials used by the Contractor in the Work, or resold to the Owner pursuant to the Contract Documents free from all liens, claims or encumbrances.
- B. For all materials and equipment to be stored at a location other than the Site prior to execution of an agreement with the Owner for materials stored off-site pursuant to General Conditions Section 8.01 G, the Contractor shall provide the Owner with written notice of the location, security, environmental

protections and the materials or equipment to be stored at that location at least fifteen (15) calendar days before such storage begins. Such notice does not obligate the Owner to pay for such stored material or equipment. Payment for stored material or equipment can be made only when the requirements for such payment in General Conditions Article 8 - Payment and elsewhere in the Contract have been met.

- C. All materials, equipment and articles which become the property of the Owner shall be new unless specifically stated otherwise.

#### **Section 5.04 - Comparable Products ("Or Equal" Clause)**

- A. Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which performs satisfactorily the duties imposed by the design intent may be considered equally acceptable provided that, in the opinion of the Design Professional, the material, article, or equipment so proposed is of equal quality, substance and function and the Contractor shall not Provide, Furnish or Install any said proposed material, article, or equipment without the prior written approval of the Design Professional. The burden of proof and all costs related thereto concerning the "or equal" nature of the substitute item, whether approved or disapproved, shall be borne by the Contractor.
- B. Where the Design Professional, pursuant to the provisions of this General Conditions Section 5.04, approves in writing a product proposed by the Contractor and said proposed product requires a revision of the Work covered by this Contract, or the work covered by other contracts, all changes in the work of all contracts, revision or redesign, and all new Drawings and details required therefore shall be provided by the Contractor at its cost and shall be subject to the approval of the Design Professional.
- C. No substitution which may result in a delay to the Project will be permitted without the prior written approval of the Owner.

#### **Section 5.05 - Quality, Quantity and Labeling**

- A. The Contractor shall Furnish materials and equipment of the quality and quantity specified in the Contract. Any excess materials purchased per the Contract Documents are the property of the Owner.
- B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards. Contractor's quality control plan required by paragraph D of this General Conditions Section 5.05 shall include measures undertaken by the Contractor to prevent the use of materials with counterfeit labels or other counterfeit indications of meeting a standard.
- C. The above requirements shall not restrict or affect the Owner's right to test materials as provided in the Contract.
- D. The Contractor shall develop and implement quality control plans to assure itself and the Owner that all Work performed by the Contractor and its Subcontractors complies fully with all Contract Document requirements. The Contractor shall submit the plans to the Owner upon request as required by the Contract. See the Submittals Section of the General Requirements for further details. The Contractor's quality control plans shall be independent of any testing or inspection performed by or on behalf of the Owner.

#### **Section 5.06 - Tax Exemption**

- A. The Contractor shall not include in its Price Proposal(s) any federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties, on all materials and supplies incorporated into the completed Work.



- B. The Contractor shall include in its Price Proposal(s) all applicable federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties, which apply to tools, machinery, equipment or other property leased by or to the Contractor or a Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed Work, and the Contractor and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.
- C. The Contractor and Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule, or regulation. The Contractor bears the risk of loss for failure to obtain or support, with documentary evidence, any specific tax exemption in connection with any Project.

## **ARTICLE 6-- SUBCONTRACTS**

### **Section 6.01 - Subcontracting**

- A. The Contractor may utilize the services of Subcontractors, subject to the limits prescribed in the Information for Bidders Section 7.0 – Approval of Subcontractors/Subcontract Limits. Exceeding stated limits, without prior written approval by the Owner, may be cause for Contract termination.
- B. The Contractor shall submit to the Owner the name of each proposed Subcontractor as required by the Contract. The Owner reserves the right to disapprove any proposed Subcontractor and such disapproval shall not result in any additional cost to the Owner. If requested by the Owner, the Contractor shall provide copies of any and all Subcontracts and purchase order agreements related to the Work. The Contractor shall require each Subcontractor to provide the Owner, upon the Owner's request, with a copy of each of the Subcontractor's subcontracts and purchase order agreements related to the Work.
- C. The Contractor's use of Subcontractors shall not diminish the Contractor's obligation to complete the Work. The Contractor shall control and coordinate the Work of Subcontractors and be fully responsible for the acts and omissions of Subcontractors, and of persons either directly or indirectly employed by Subcontractors. The Contractor shall be responsible for all guarantees and warranties provided by Subcontractors.
- D. The Contractor shall be responsible for requiring each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to be bound to the Contractor by all the terms, conditions, and requirements of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. The Contractor shall cause each Subcontractor to receive and review the provisions of the Contract Documents applicable to the Subcontractor, including but not limited to a copy of the Payment Bond for the Job Order(s) if applicable. Upon request of the Owner, the Contractor shall provide written proof satisfactory to the Owner that each Subcontractor has received and reviewed the provisions of the Contract Documents applicable to such Subcontractor.
- E. The Contractor shall ensure that each Subcontractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client, are, to the fullest extent permitted by law, at least the same as the Contractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client.
- F. To the fullest extent permitted by law and independent of any duty to indemnify and hold harmless, the Contractor shall require each Subcontractor, to the fullest extent permitted by law, to defend the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Subcontractor's operations or presence at, or in the vicinity of, the Site.

- G. The Contractor shall require each Subcontractor, in addition to the Subcontractor's other obligations, to pay the costs of the Owner and Client, including but not limited to, attorneys' and consultants' fees, expenses and court costs, to commence and prosecute a court action against the Subcontractor to enforce one or more of the Subcontractor's obligations under General Conditions Section 6.01 E, F or G or against an insurance company to obtain coverage under an insurance policy which the Subcontractor represented would provide coverage to the Owner or Client.
- H. Nothing contained in the Contract or any subcontract shall create any contractual relationship between any Subcontractor and the Owner except the requirements in General Conditions Sections 15.03 and 15.04 for each Subcontractor to procure insurance policies on which the Owner or the Owner and Client are insureds, the obligations of each Subcontractor pursuant to General Conditions Section 6.01 E, F and G to defend, indemnify and hold harmless, to the fullest extent permitted by law, the Owner and Client against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever and the obligation of each Subcontractor pursuant to General Conditions Section 6.01 (H).

In selecting a Subcontractor, the Contractor shall consider whether the proposed 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 Contractor 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 Contractor 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 Contractor 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.

In selecting a Subcontractor, the Contractor shall also consider whether the proposed 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.

Prior to award of a Contract, the Contractor shall require any 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 Contractor or Subcontractor shall provide, a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for any other Subcontractor performing Work on the Project for review. Additionally, the Owner or Contractor may require a 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.

- I. Prior to or after award of the Contract, if requested by the Owner, the Contractor shall require a Subcontractor to submit a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority Vendor Questionnaire. If requested by the Owner, the Contractor shall require a Subcontractor to update a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire previously submitted to the Owner.
- J. The Contractor shall submit a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) and a Dormitory Authority DASNY Vendor Questionnaire to the Owner for each Subcontractor proposed for the Work with a subcontract value of two million dollars (\$2,000,000) or greater. Refer to General Conditions Article 19 – Executive Order No. 125.



- K. After execution of the Contract, the Owner will provide to the Contractor copies of the Owner's Code of Business Ethics Certification form. The Contractor is required to have each Subcontractor, at all tiers, complete the form prior to the Subcontractor beginning work. The completed forms are to be filed by the Contractor with the Owner. A failure to comply with this requirement may result in the Subcontractor(s) being removed from the Project Site.

## **ARTICLE 7 -- CHANGES IN THE WORK**

### **Section 7.01 - Changes**

- A. Without invalidating the Contract, the Owner, in writing, may order changes in the Work by altering, adding to, or deducting from the Work of the Contract and/or Job Order(s).
1. No change in the Work is effective unless the Owner executes and delivers a Change Order to the Contractor. No payment for a change in the Work is due the Contractor unless and until a Change Order is executed and delivered by the Owner to the Contractor and the Contractor has performed the change in the Work. No alteration to the standard language of the Owner's Change Order form shall be accepted. If the Contractor requests an adjustment to the Substantial Completion date for a change in the Work and the Owner agrees, an increase or decrease to the duration, in calendar days, shall be included in the Change Order.
  2. Notwithstanding subparagraph 1, the Owner, at its discretion, may execute and deliver to the Contractor a Notice to Proceed directing the Contractor to proceed immediately and diligently with the change in the Work described in the Notice to Proceed. The Owner, upon execution and delivery of the Notice to Proceed to the Contractor, is obligated to adjust the Contract for the change in the Work described in the Notice to Proceed; the extent of the adjustment(s) will be determined using the method of General Conditions Section 7.01 B specified in the Notice to Proceed, this General Conditions Article and negotiations with the Contractor; the adjustment(s) will be stated in the Change Order to be executed and delivered by the Owner to the Contractor. The Contractor, upon receipt of the Notice to Proceed, is obligated to proceed immediately and diligently with the change in the Work described in the Notice to Proceed while the adjustment(s) are determined. No alteration to the standard language of the Owner's Notice to Proceed form shall be accepted. No payment for the change in the Work is due the Contractor until the Change Order is executed and delivered by the Owner to the Contractor and the Contractor has performed the change in the Work. The Owner determines, in its sole and exclusive discretion, the duration between execution and delivery of the Notice to Proceed and execution and delivery of the Change Order.
  3. Contractor's failure to proceed immediately and diligently with any Notice to Proceed or Change Order executed and delivered by the Owner to the Contractor, unless the Owner in writing directs otherwise, shall be a material breach of the Contract.
  4. If, after the Owner has executed and delivered a Notice to Proceed to the Contractor for a change in the Work, the Owner and the Contractor cannot agree on the adjustment(s) to the Contract for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Contractor in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Contractor does not accept the Forced Change Order, the Contractor shall strictly comply with the requirements of General Conditions Section 7.01 D.
  5. No Change Order is executed by the Owner unless and until the Change Order is reviewed and accepted by the Owner and properly executed by an authorized representative of the Owner with appropriate approval authority in accordance with the Owner's internal procedures.

- B. Except as provided for in Section 1A.09 of this Contract, the Job Order amount may be increased or decreased only by a Change Order and the amount of the adjustment is determined by one or more of the following methods, as determined by the Owner:
1. By estimating the fair and reasonable cost of the change in the Work or deleted Work.
  2. By determining the actual cost of the change in the Work and considering the following:
    - a. Labor, including all wages and required wage supplements, paid to employees below the rank of superintendent directly employed at the Site for the change in the Work. Minimum wages are the prevailing rate of wages defined by the NYS Department of Labor. Actual wages in excess, paid by the Contractor, may be considered by the Owner.
    - b. Premiums or taxes paid by the Contractor for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.
    - c. Materials associated with the change in the Work.
    - d. Equipment, excluding hand tools, which in the judgment of the Owner, would have been or will be employed in the Work. The Owner may employ the use of rental rates it deems most appropriate from the information in the "Equipment Watch Retail Rental and Equipment Watch Cost Recovery" databases. In no case will the equipment rental cost exceed the purchase price of the equipment. Self-owned equipment is defined to include equipment rented from Contractor-controlled or affiliated companies. It is the duty of the Contractor to utilize either rented or self-owned equipment that is of a nature and size appropriate for the Work to be performed. The Owner reserves the right to determine reasonable and appropriate equipment sizing, and at the Owner's discretion, it may adjust the costs allowed to reflect a smaller or less elaborate piece of equipment more suitable for performance of the change in the Work. The Owner, in its sole and exclusive discretion, will determine if equipment is rented from a company controlled by or affiliated with the Contractor.
    - e. To determine the daily and hourly rate of self-owned equipment, the monthly rate shall be divided by twenty-two (22) to establish a daily rate; or by one hundred seventy-six (176) to establish the hourly rate. The operating cost listed in the "Equipment Watch Retail Rental and Equipment Watch Cost Recovery" databases would be added to this rate to establish the billable rate.
- C. For each change in the Work, the Contractor shall submit to the Owner, within the time period provided by the Owner, the following information:
1. A detailed proposal of labor, material, and equipment costs for the change in the Work. The Contractor and Subcontractors shall use the Owner's Contractor and Subcontractor Change Order Proposal Forms, which are available directly from the Owner or from the Dormitory Authority's website.
  2. The Contractor's and Subcontractor's proposal forms shall include the following signed statement, which shall be notarized if so requested by the Owner:

*"I hereby certify that the value for the labor, material and equipment that comprise the proposal, represents the value of said work, material and equipment for the work performed or to be performed, pursuant to the Contract between the undersigned and the Dormitory Authority and that no overhead or profit is included in the proposal for a change to the Work performed by any Subcontractor or for any major equipment or material supplier that is a subsidiary or an affiliate of this firm."*

3. Signed Labor Rate Worksheet to determine hourly rates for each classification of worker associated with the change in the Work. The Contractor shall use the Owner's Labor Rate Worksheets, which are available directly from the Owner or from the Dormitory Authority's website <http://www.dasny.org>. Only hourly rates for each classification of worker approved by the Owner can be used to determine the adjustment of the Contract amount for a Change Order. Only an authorized officer of Owner or authorized employee of Owner's Project Controls Unit can approve Labor Rate Worksheets.
  4. Narrative and fragnet schedule, which describes the impact on the Project CPM schedule in calendar days associated with the change in the Work if the Contractor requests a change in the date to achieve Substantial Completion. Owner, in its sole and exclusive discretion, may waive, in writing, this requirement for requests to change the date to achieve Substantial Completion made prior to the Owner's approval of the initial Project CPM schedule. Owner's waiver of this requirement can be made only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit. If the Contractor does not submit a narrative and fragnet schedule, the Contractor acknowledges that the Change Order does not require a change in the date to achieve Substantial Completion.
  5. The Contractor agrees to provide, at the Owner's request, any additional documentation to further verify labor, material, equipment, and any other cost sought for a change in the Work.
  6. The Contractor agrees to provide, at the Owner's request, written justification for a change in the Work.
- D. Each Contractor's written change proposal shall be reviewed by the Owner consistent with the requirements of the Contract Documents.
1. Owner and Contractor shall negotiate in good faith to agree on the adjustment(s) to the Contract for each change in the Work. The Owner is not required to respond to any change proposal submitted by the Contractor until the Contractor submits a change proposal that complies with the Contract Documents. Negotiations under this General Conditions Article shall not impact the Project schedule. The Contractor's proposal for a change in the Work is approved and accepted by the Owner only by the Owner's execution and delivery of a Change Order to the Contractor. See General Conditions Section 7.01 A. 5 for the requirements of execution and delivery.
  2. If the Owner has executed and delivered a Notice to Proceed to the Contractor for a change in the Work and the Owner and the Contractor cannot agree on the adjustment(s) to the Contract for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Contractor in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Contractor does not accept the Forced Change Order, the Contractor shall file a notice of Claim in strict accordance with General Conditions Section 10.03 and comply strictly with all requirements of General Conditions Sections 10.03, 10.05 and 10.06. The Contractor's failure to comply with any or all of General Conditions Sections 10.03, 10.05 and 10.06 shall be deemed to be:
    - a. a conclusive and binding determination on the part of the Contractor to accept the Forced Change Order as final, binding and conclusive on the Contractor; and
    - b. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the Forced Change Order.

- E. Any information representing the value of the Work performed, materials supplied and equipment utilized contained in the Contractor's and Subcontractor's proposals that constitutes False Representation may subject the Contractor or Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
- F. The compensation specified in the Change Order executed by the Owner and delivered to the Contractor includes full compensation for the changes in the Work covered thereby, and the Contractor waives all rights to any other compensation, damages, or expenses for the changes in the Work described therein.
- G. The Contractor shall furnish satisfactory bills, certified payrolls, vouchers, and other cost documentation covering all items of cost and when requested by the Owner shall give the Owner access to all accounts and records relating thereto, including records of Subcontractors and material suppliers.
- H. At Substantial Completion, the Owner may address increased Project-specific bonding, liability insurance and builder's risk insurance costs which may have resulted from changes in the Work. The Contractor shall provide satisfactory proof of and paid invoices, including cancelled checks or bank statements showing payment, for such increased costs. The Owner will not pay overhead and profit on any increased costs for bonding, liability insurance or builder's risk insurance.
- I. General Conditions Section 10.01 applies when the Owner determines that a decision, response, direction, action, omission, or condition does not require performance of Extra Work.

## **Section 7.02 - Overhead and Profit**

- A. See Example A for changes in the Work performed directly by the Contractor, whether a base cost is arrived at by estimated cost or actual cost method; add to base cost a sum equal to twenty (20%) percent. See Exceptions - Paragraphs "C" and "D".

### **Example A:**

Contractor base cost	\$1,000
20% overhead and profit	<u>200</u>
Total	\$1,200

- B. See Example B for changes in the Work performed by a Subcontractor under contract with the Contractor; add to the base cost a sum equal to twenty percent of cost, for the benefit of the Subcontractor. For the benefit of the Contractor; add an additional sum equal to fifteen (15%) percent of the Subcontractor's base cost.

### **Example B:**

Subcontractor base cost	\$1,000
20% Subcontractor overhead and profit	<u>200</u>
Subcontractor Total	\$1,200
15% Contractor overhead and profit on base cost	<u>150</u>
Total	\$1,350

- C. See Example C for overhead and profit on major equipment such as: switchgear, transformers, air handling units, boilers, etc. For extra equipment purchases by the Contractor or Subcontractors which exceeds a base cost of Ten Thousand dollars (\$10,000) in estimated or actual cost; add to the base cost for the benefit of the Contractor a sum equal to ten (10%) percent of the first Ten Thousand dollars (\$10,000) of the vendor's base cost plus five (5%) percent of the next Ninety Thousand dollars (\$90,000) of the vendor's base cost, plus three (3%) percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the vendor's base cost.

**Example C:**

Vendor base cost	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500
10% Contractor overhead and profit on first \$10,000 base cost when equipment is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

- D. See Example D for overhead and profit on a material only Change Order. For increased material purchases by the Contractor or Subcontractors; add to the base cost for the benefit of the Contractor a sum equal to ten (10%) percent of the first Ten Thousand dollars (\$10,000) of the supplier's cost plus five (5%) percent of the next Ninety Thousand dollars (\$90,000) of the supplier's cost, plus three (3%) percent of any sum in excess of One Hundred Thousand dollars (\$100,000) of the supplier's cost.

**Example D:**

Material cost (net difference between original contract and revised)	\$200,000
10% Contractor or Subcontractor overhead and profit on first \$10,000 base cost	1,000
5% on next \$90,000 base cost	4,500
3% on base cost over \$100,000	<u>3,000</u>
Contractor or Subcontractor Total	\$208,500
10% Contractor overhead and profit on first \$10,000 base cost when material is supplied by the Subcontractor, no other mark-up allowed	<u>1,000</u>
Total	\$209,500

- E. Other than the overhead and profit described in General Conditions Section 7.02A, no further overhead and profit will be allowed for changes to the Work performed by a Subcontractor under Subcontract with the Contractor or for major equipment or material supplier determined to be an affiliate of or controlled by the Contractor. An affiliate is considered any firm or entity in which the Contractor or any individual listed on the Contractor's NYS Vendor Responsibility Questionnaire either owns five (5%) percent or more of the shares of, or is one of the five largest shareholders, a director, officer, member, partner or proprietor of said Subcontractor, major equipment or material supplier; a controlled firm is any firm or entity which, in the opinion of the Owner, is controlled by the Contractor or any individual listed on the Contractor's NYS Vendor Responsibility Questionnaire.
1. The Owner, in its sole and exclusive discretion, will determine if a firm or entity is an affiliate of or controlled by the Contractor.
- F. No overhead and profit shall be paid for changes in the Work performed by a Subcontractor not under Subcontract with the Contractor. No overhead and profit shall be paid on the premium portion of overtime pay. Where the changes in the Work involve both an increase and a reduction in similar or related Work, the overhead and profit allowance shall be applied only to the cost of the increase that exceeds the cost of the reduction.
- G. The Owner, in its sole and exclusive discretion, shall require any Contractor or Subcontractor that is issued a Contract pursuant to pricing from a New York State Office (NYS) of General Services (OGS) Centralized Contract held by said Contractor or Subcontractor to provide an itemized change proposal as per the rates for non-trade service labor, equipment, and materials established within aforementioned NYS OGS Centralized Contract. Rates are considered inclusive of overhead and profit and no additional markup will be approved. All other provisions of Article 7 – Changes to the Work shall apply.

**Section 7.03 - Deduct Change Order**

The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a decrease in the Contract amount shall be as determined by the Owner. The credit shall include the overhead and profit allocable to the deleted or changed Work unless the Owner, in its sole and exclusive discretion, determines otherwise.

## **ARTICLE 8 -- PAYMENT**

### **Section 8.01 - Provision for Payment**

- A. The Contractor shall complete and submit to the Owner for review and written approval, the detailed Schedule of Values prior to the Contractor's first billing request. It is understood, and the Contractor acknowledges, that the Schedule of Values is an administrative tool to illustrate a format and minimum level of detail required for billing requests, and shall not be considered as delineating the Contractor's scope of Work. The Owner may require the Contractor to revise its Schedule of Values at no cost to the Owner and to provide a greater level of detail. Further, the Owner reserves the right to accept only those cost distributions which, in the Owner's opinion, are reasonable, equitably balanced and correspond to the estimated quantities in or for the Contract Documents. Owner's approval of the Schedule of Values can be provided only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit.

The Contractor, at its own expense, shall take all actions necessary to fully comply with the requirements of the Statewide Utilization Management Plan ("SUMP") of the NYS Contract System. Contractor shall require all Subcontractors to comply with the requirements of SUMP and the NYS Contract System. These requirements include, but are not limited to, the Contractor's timely payment to all Subcontractors and timely input into the NYS Contract System of information, including but not limited to, information regarding Subcontractor payments and compliance with Contract requirements, including but not limited to Contract requirements for participation of Minority and Women Owned Business Enterprises in the performance of the Contract.

- B. The Owner shall not approve any billing request until:
1. the Contractor is in full compliance with SUMP and the NYS Contract System; and
  2. the Owner provides approval of Schedule of Values.
- C. To request a partial or full payment for partial or full performance of the Job Order, Contractor shall obtain from the Owner a Contractor's billing request. The Contractor shall complete the billing request by entering in each line item thereof the percentage of completion of that item as of the end of the preceding business month or billing cycle and deliver the completed billing request to the Owner. The Owner shall review the billing request and make any changes which the Owner, in its sole and exclusive discretion, determines to be necessary so that the percentage of completion for each line item in the billing request accurately reflects the Contractor's performance of the Job Order as of the end of the preceding business month. The Owner then delivers the Owner's adjusted version of the billing request to the Contractor for execution by the Contractor of the certifications of the Contractor required for partial or full payment for partial or full performance of the Job Order. The Contractor delivers the executed billing request to the Owner. Any partial payment request under the Contract Documents shall be at least thirty (30) calendar days after the preceding partial payment request under the Contract Documents, unless the Owner in writing signed by an authorized officer permits more frequent requests.



- D. The Owner may make a partial payment to the Contractor for partial performance of the Job Order on the basis of an Application for Payment for the Work performed during the preceding business month. The Owner shall retain five percent (5%) of the amount of each said Application for Payment. The Owner may make full payment to the Contractor for full performance of the Job Order on the basis of an Application for Payment. Each Application for Payment shall be accompanied by all documentation required by law, including but not limited to, certified payrolls and all documentation required by the Owner, including but not limited to documentation to establish compliance with NYS Labor Law and NYS Lien Law. The Owner may require any documentation the Owner determines is necessary or useful to establish that the Contractor's performance of the Work complies with the requirements of the Contract Documents and applicable law.
- E. Any partial payment made shall not be construed as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract Documents. No payment, either partial or full, by the Owner to the Contractor shall waive or excuse any failure by the Contractor to comply fully with the Contract Documents. No payment will be made for Work not performed.
- F. In preparing the Contractor's billing request, material delivered to the Site and properly stored and secured at the Site and material approved to be stored off-site under such conditions as the Owner shall prescribe in accordance with paragraph G of this General Conditions Section 8.01, may be taken into consideration. All costs related to the storage of materials are the sole responsibility of the Contractor.
- G. The Owner will provide an agreement for materials stored off-site and specific forms that the Contractor shall complete, execute, and submit with any billing request for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases of liens, and inventory. The Owner, in its sole and exclusive discretion, may require the Contractor to certify in the agreement for materials stored off-site that the materials comply with one or more requirements of the Contract or to provide documentary proof acceptable to the Owner that the materials comply with one or more requirements of the Contract Documents.
- H. All monthly billing requests submitted by the Contractor shall only be in the form and manner approved by the Owner. The Contractor shall furnish such affidavits, vouchers, receipts, and other documentation as to delivery and payment for materials, payment of Subcontractors, and payment of prevailing rate of wage and supplements required by NYS Labor Law as the Owner requires to substantiate each and every billing request. Contractor shall furnish any other documentation required by Owner to establish compliance with one or more requirements of the Contract or any statute or regulation, including but not limited to the certification required by General Conditions Section 16.02 and proof of compliance with NYS Labor Law Section 220-h (See General Conditions Section 16.03 H).
- I. All payments received by the Contractor under or in connection with the Contract are trust funds under Article 3-A of the NYS Lien Law and shall be applied by the Contractor in accordance with such law.

## **Section 8.02 - Substantial Completion and Reduction of Retainage**

- A. After the Owner has determined Substantial Completion of the Work of a Job Order, as evidenced by the executed Notice of Substantial Completion, the Owner shall pay to the Contractor the balance due the Contractor pursuant to the Contract less:
1. Two (2) times the value of any remaining items of Work to be completed or corrected as determined in accordance with paragraph (B) of this General Conditions Section 8.02.
  2. An amount necessary to satisfy any and all claims, liens, or judgments by the Owner or third parties against the Contractor.
- B. After the Owner has determined Substantial Completion of the Work of a Job Order, as evidenced by the executed Notice of Substantial Completion, the Contractor shall submit to the Owner, for Owner's written approval, a detailed estimate of the value of the known remaining items of Work of the Job Order as set forth by the Owner and a schedule for achieving Physical Completion and Completion and Acceptance of the Work. The Owner shall review that estimate and schedule and:
1. Direct the Contractor to revise and resubmit the estimate, the schedule or both; or
  2. Approve the estimate and schedule.
- The Owner, at its discretion, may value the items of Work to be completed or corrected assuming such items will be completed or corrected by an entity other than the Contractor and may include the cost of obtaining regulatory or other third-party approval of one or more items of Work.
- C. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to a duly completed and submitted Application for Payment.
- D. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to this General Conditions Section 8.02.
- E. The Contractor may request from the Owner a reduction of retainage when a phase of the Work is accepted by the Owner, but Owner is not obligated to grant such request.
- F. The Application for Payment for the first payment of reduction of retainage shall be accompanied by a release, by the Contractor to the Owner, in the form set forth at Exhibit "[A]" to the General Conditions. As set forth in such release, any Claims not specifically excepted and reserved by the Contractor per the release form will be released and forever discharged. Owner's acceptance of a release containing Claims specified by and reserved to the Contractor does not waive any rights of the Owner arising under the Contract or any other source with respect to such Claims. By executing this Agreement, Contractor acknowledges and agrees that it has reviewed the release in the form set forth at Exhibit "[A]" to the Contract Documents. Submission of the duly completed release set forth at Exhibit "[A]" to the Contract Documents along with the Application for Payment for the first payment of reduction of retainage is a condition precedent to the release of any retainage by the Owner.

The requirement of a release may be waived only in writing and only by the Owner's Office of Counsel. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment Bonds.

## **Section 8.03 - Release and Consent of Surety**

Notwithstanding any other provision of the Contract Documents to the contrary, reduction of retainage and/or the final Application for Payment shall not become due until the Contractor submits to the Owner a General Release from the Contractor and, if the Owner requests, a Consent of Surety to said payment in



form and content acceptable to the Owner. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment Bonds.

#### **Section 8.04 - Liens**

- A. Upon the Owner's receipt of a notice of public improvement lien, all, or a portion, of the amounts due in the current and subsequent payments due the Contractor shall be withheld until a sum which shall be one and one-half (1 1/2) times the amount stated to be due in the notice of public improvement lien shall have been withheld from payments due the Contractor. This sum shall be withheld until the lien is discharged. The Contractor shall promptly discharge any notice of public improvement lien by filing a bond pursuant to NYS Lien Law Section 21, subdivision 5. If any Subcontractor should file a notice of lien against the property upon which the Project is located, such lien is void and the Contractor, at its own expense, shall obtain and file an order of the Supreme Court of the State of New York cancelling such lien. If Contractor shall fail to obtain such order or if Contractor shall file a notice of lien against the property upon which the Project is located, the Owner may obtain an order of the Supreme Court of the State of New York cancelling such lien and deduct the attorney's fees and other costs incurred in obtaining and filing such order from any amount due the Contractor.
- B. Upon receipt of any other lien, levy, notice to withhold, restraining notice, court or administrative order or any other instrument allowed by law and directing the Owner to withhold payments due Contractor, the Owner will withhold the sum which Owner determines is necessary to withhold to comply with the applicable law. This sum shall be withheld until the instrument is, in the Owner's sole and exclusive discretion, appropriately satisfied or discharged.

#### **Section 8.05 - Withholding of Payments**

- A. The Owner may withhold from the Contractor any part of any payment as may, in the judgment of the Owner, be necessary:
  - 1. To ensure payment of just claims of any natural person or entity supplying labor, materials, or equipment for the Work.
  - 2. To protect the Owner from loss due to defective Work not remedied.
  - 3. To protect the Owner, Client, or any Consultant from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of Other Contractors, Subcontractors or others caused by the act or neglect of the Contractor or Subcontractors.
  - 4. To ensure payment of fines and penalties, that may be imposed on the Contractor pursuant to the provisions of the Contract.
  - 5. To ensure payment of fines, penalties, or damages that may be imposed on the Contractor pursuant to General Conditions Article 20 - Opportunity Programs.
  - 6. To protect and make whole the Owner from a Contractor's non-compliance to the requirements set forth in General Conditions Article 14 – Protection of Persons and Property and Article 15 – Insurance and Bonds.
  - 7. To protect the Owner and Client from damage caused or claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work of the Contract in strict accordance with the Contract Documents.
- B. The Owner shall have the right to apply any such amounts so withheld in such a manner as the Owner may deem proper to satisfy said claims, fines, and penalties, or to secure said protection. Said application of the money shall be deemed payments for the account of the Contractor.

## **Section 8.06 - Late Payment**

Timeliness of payment and any interest to be paid to the Contractor for late payment is governed by Section 2880 of the NYS Public Authorities Law. Timely payment by the Contractor to the Subcontractor is governed by Section 139-f of the NYS State Finance Law which requires payment by the Contractor to the Subcontractor within seven (7) calendar days of receipt of payment from the Owner.

## **Section 8.07 – False Representations/Information**

- A. False Representations, 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 for cause;
  - 2. Disapproval of future bids or contracts or subcontracts;
  - 3. Withholding of final payment on the Contract; and
  - 4. Civil and/or criminal prosecution (See General Conditions Sections 7.01 E and 10.03 F).
- B. The provisions of this General Conditions Section 8.07 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 9 -- TIME OF COMPLETION**

### **Section 9.01 - Substantial Completion**

- A. The Contractor shall commence performance of the Work of each Job Order at the time stated in the Notice to Proceed and the Contractor shall achieve Substantial Completion of each Job Order no later than the date for Substantial Completion specified in the subject Job Order. Notwithstanding anything to the contrary, a schedule submitted by the Contractor showing Substantial Completion earlier than that specified in the Job Order shall not entitle the Contractor to any additional cost in the event the earlier date is or is not realized unless agreed to by the Owner .
- B. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that Substantial Completion of the Work on or before the date for Substantial Completion specified in the Job Order, is an essential condition of the Contract.
- C. The Contractor agrees that the Work shall be prosecuted regularly, diligently, and cooperatively with Other Contractors at such rate of progress as shall ensure Substantial Completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time to achieve Substantial Completion allowed herein is reasonable.
- D. It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for Substantial Completion of the Work, the new date of Substantial Completion established by said extension shall be of the essence. The Contractor shall not be charged with liquidated damages or any excess cost of the Owner or Client if the Owner determines in its sole and exclusive discretion that the Contractor is without fault and that the delay in Substantial Completion of the Job Order is caused by:
  - 1. Any preference, priority or allocation order duly issued by the Government of the United States or the State of New York.

2. An unforeseeable cause beyond the control and without the fault of, or negligence of the Contractor, and approved by the Owner, including, but not limited to, acts of God or of public enemy, acts of the Owner, fires, epidemics, pandemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
  3. Any delays of Subcontractors or suppliers occasioned by any of the causes specified in Subsections 1 and 2 of this paragraph provided the Contractor shall, within fifteen (15) calendar days from the beginning of any such delay, notify the Owner in writing of the causes of the delay. Notice shall be delivered to the Owner as specified in General Conditions Section 10.03 C.
- E. The date of Substantial Completion may be modified only by a Change Order.
  - F. If the Contractor shall neglect, fail, or refuse to achieve Substantial Completion by the date specified, or any proper extension thereof granted by the Owner, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Job Order, not as a penalty, but as liquidated damages, for each and every calendar day thereafter that the Contractor does not achieve Substantial Completion.
  - G. If the Contractor shall abandon performance of the Work before achieving Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Job Order, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of abandonment and the date specified for Substantial Completion that the Work has not achieved Substantial Completion. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.
  - H. If the Owner terminates the Contract or Job Order(s) before the Contractor achieves Substantial Completion of the Work of the Job Order(s), the Contractor agrees to pay to the Owner for loss of beneficial use of the Work an amount specified in the Job Order, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of termination of such Work and the date specified for Substantial Completion that the Work has not achieved Substantial Completion. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.
  - I. Said amount of liquidated damages is agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the Owner would sustain for loss of beneficial use of the Work of the Contract in the event of delay in Substantial Completion, abandonment of the Work by the Contractor or termination of the Contract pursuant to General Conditions Section 11.01, and said amount is agreed to be the amount of damages sustained by the Owner and said amount may be retained from time to time by the Owner.
  - J. The foregoing liquidated damages are intended to compensate the Owner only for the loss of beneficial use of the Work of the Contract. In addition, the Contractor shall be liable to the Owner and the Client, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Owner or Client may incur as a result of any actions or inactions of the Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to Other Contractors working on the Project or other third parties, job extension costs, and other losses incurred by the Owner or Client. The provisions of this paragraph are for the exclusive use of the Owner and Client, and shall not accrue to Other Contractors or other third parties.
  - K. The Owner will issue the Notice of Substantial Completion after the Owner, in its sole and exclusive discretion, has determined that Substantial Completion of the Work has occurred.

## **Section 9.02 – Physical Completion and Completion and Acceptance**

- A. After the Owner has issued the Notice of Substantial Completion, the Contractor shall comply with General Conditions Section 8.02 B. Compliance with General Conditions Section 8.02 B is a condition precedent to the payment described in General Conditions Section 8.02 A. Once the Owner approves

the detailed estimate of the value of the known remaining items of Work and the schedule for achieving Physical Completion and Completion and Acceptance, the Contractor shall achieve Physical Completion and Completion and Acceptance no later than the dates for each in the approved schedule. The Owner and Contractor agree that achieving Physical Completion and Completion and Acceptance no later than the dates for each in the approved schedule is an essential condition of the Contract Documents and that time is of the essence.

- B. The Contractor agrees that after achieving Substantial Completion, Contractor shall continue to prosecute the remaining items of Work regularly, diligently, and cooperatively with Other Contractors. Contractor further agrees that once the schedule for achieving Physical Completion and Completion and Acceptance is approved, the Contractor shall prosecute the remaining items of Work regularly, diligently, and cooperatively with Other Contractors at such a rate of progress as shall ensure the achieving of Physical Completion and Completion and Acceptance by the dates for each in the approved schedule.
- C. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to General Conditions Section 8.02.
- D. The Owner will issue the Notice of Physical Completion after the Owner, in its sole and exclusive discretion, has determined that Physical Completion of the Work of the Job Order has occurred.
- E. The Owner will issue the Notice of Completion and Acceptance after the Owner, in its sole and exclusive discretion, has determined that Completion and Acceptance of the Work of the Job Order has occurred. Completion and Acceptance follows or may be concurrent with Physical Completion.

## **ARTICLE 10 -- CLAIMS AND DISPUTES**

### **Section 10.01 - Claim for Extra Work**

A. If the Contractor claims that:

- 1. a decision of, or direction or response to the Contractor by the Owner, Consultant, or Owner Representative;
- 2. a condition; or
- 3. any action or omission of the Owner

is contrary to the terms and provisions of the Contract and will require the Contractor to perform Extra Work, Contractor shall file a written notice of Claim in strict accordance with General Conditions Section 10.03. No Claim for Extra Work shall be allowed unless the Contractor files a written notice of Claim that complies strictly with the requirements of General Conditions Sections 10.01 and 10.03. The notice of Claim shall identify the decision, direction, response, action, omission, or condition from which the Claim arises. The Contractor shall also strictly comply with all other requirements of General Conditions Sections 10.01 and 10.03.

- B. If the Owner determines the decision, response, direction, action, omission, or condition does not require the performance of Extra Work, the Owner shall issue a Disputed Work Directive. The Contractor, upon receipt of the Disputed Work Directive shall immediately and diligently proceed with the Work described in the Disputed Work Directive in accordance with all instructions of the Owner. Contractor's failure to proceed immediately and diligently with any Disputed Work Directive issued by the Owner, unless the Owner in writing directs otherwise, shall be a material breach of the Contract. Contractor's performance of the Work described in and pursuant to the Disputed Work Directive shall not be a waiver of the Contractor's Claim for Extra Work provided the Contractor strictly complies

with all requirements of General Conditions Sections 10.01, 10.03 and 8.02 (F). The Owner may issue a Disputed Work Directive for a decision, response, direction, action, omission, or condition before the Contractor files a notice of Claim arising from such decision, response, direction, action, omission, or condition; if the Owner does so, the Contractor shall still file a notice of Claim in strict compliance with General Conditions Section 10.03 and shall strictly comply with all requirements of General Conditions Sections 10.01 and 10.03.

- C. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.01 and 10.03 shall be deemed to be:
1. a conclusive and binding determination on the part of the Contractor that the decision, response, direction, action, omission, or condition does not involve Extra Work; and
  2. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the decision, response, direction, action, omission, or condition.

#### **Section 10.02 - Claim for Additional Cost**

- A. If the Contractor wishes to make a Claim for an increase in the cost to perform the Work, including but not limited to a Claim alleging breach of the Contract by Owner, the Contractor shall file a written notice of Claim strictly in accordance with General Conditions Section 10.03. The notice of Claim shall identify the condition or event from which the Claim arises. No Claim for an increase in the cost to perform the Work of the Contract shall be allowed unless the Contractor files a notice of Claim that complies strictly with the requirements of General Conditions Section 10.02 and 10.03. Contractor shall also strictly comply with all other requirements of General Conditions Sections 10.02 and 10.03. The Owner shall determine the validity of the Contractor's contention. Pending the decision of the Owner, the Contractor shall proceed with the diligent and prompt performance of the Work. Denial of additional costs shall not entitle the Contractor to additional time to achieve Substantial Completion. Nothing in this paragraph waives any of Owner's rights under the Contract Documents.
- B. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.02 and 10.03 shall be deemed to be:
1. a conclusive and binding determination on the part of the Contractor that the event or condition does not increase the cost to perform the Work of the Contract; and
  2. a waiver by the Contractor of all Claims for additional compensation or damages as a result of the event or condition.

#### **Section 10.03 - Notice of Claim and Substantiation**

- A. A written notice of Claim shall be delivered concurrently to the Owner's Representative and Project Controls Unit by the Contractor within fifteen (15) calendar days after occurrence of the event, decision, direction, response, action, or omission giving rise to such Claim or within fifteen (15) calendar days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. The burden of proving the Owner's receipt of the notice of Claim shall be the Contractor's responsibility. Contractor's failure to strictly comply with the requirements of this Section 10.03 shall constitute a waiver of its Claim.
- B. Within ninety (90) calendar days of the initial notice of Claim, the Contractor shall substantiate the Claim in writing and document the nature of the Claim and provide supporting cost data and documentation, Contractor's original cost estimate, Project CPM schedule demonstrating alleged impact of and correlation to the Claim subject matter and a Contractor affidavit stating the following:

*"I hereby certify that the value assigned the work, labor, material and equipment that comprise the Claim, represents the actual value of said work, labor, material and equipment pursuant to the Contract between the undersigned and the Dormitory Authority."*

1. The Contractor shall provide, every thirty (30) calendar days thereafter for as long as such damages are incurred, written, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.
  2. Contractor shall identify the final written, verified statement for each Claim submitted pursuant to this paragraph.
  3. Each written, verified statement shall be delivered as set forth in paragraph C of this General Conditions Section 10.03.
- C. The Contractor shall provide the Owner's Representative one (1) electronic copy of the documented Claim and mail two (2) paper copies of the documented Claim to:
- Dormitory Authority  
Project Controls Unit  
515 Broadway  
Albany, NY 12207-2964
- D. The Owner, at any time after the Contractor files a notice of Claim, may request additional documentation to determine the validity of the Contractor's contention and the Contractor shall submit such additional documentation within the time period specified by the Owner in the Owner's request for additional documentation. The Owner, at any time after the Contractor files a notice of Claim, may request an updated and reconciled electronic copy of the documented Claim and the Contractor shall submit such a copy within ten (10) calendar days.
- E. The value of any Claim, if allowed, shall be determined by the methods described in General Conditions Article 7 – Changes in the Work. No Claim shall be allowed unless and until a Change Order allowing the Claim is executed and delivered by the Owner to the Contractor; payment of an allowed Claim may be made only through an Application for Payment.
- F. Any information representing the actual value of the labor performed, equipment utilized and material Furnished contained in the Claim that constitutes False Representation may subject the Contractor or Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.

#### **Section 10.04 - No Damages for Delay**

- A. No Claims for increased costs, charges, expenses, or damages of any kind shall be made by the Contractor against the Owner for any delays or hindrances from any cause whatsoever; provided that the Owner, in the Owner's sole and exclusive discretion, may compensate the Contractor for any said delays or hindrances by extending the date for achieving Substantial Completion specified in the Contract. No payment for increased cost, charge, expense, or damage of any kind shall act as a waiver of the Owner's right, in its sole and exclusive discretion, to compensate the Contractor for any delays or hindrances from any cause whatsoever solely by extending the date for achieving Substantial Completion specified in the Contract Documents.
- B. If the Contractor claims that a delay or hindrance entitles the Contractor to additional time to achieve Substantial Completion, the Contractor shall submit a written request to the Owner for such additional time within fifteen (15) calendar days of the event or condition giving rise to the request. The written request shall identify the event or condition causing the alleged delay or hindrance giving rise to the request and show that the Contractor is not responsible for the delay or hindrance or for any concurrent delay. The Contractor shall submit with the request an updated Project CPM schedule that shows the



impact of the event or condition on the Project CPM schedule. The request and updated Project CPM schedule shall be submitted to the Owner in accordance with General Conditions Section 10.03 C. The Owner may request additional documentation to decide the Contractor's request and the Contractor shall submit such additional documentation within the time period specified by Owner in the Owner's request for additional documentation. Failure of the Owner to respond in writing to a written request for additional time within thirty (30) calendar days shall be deemed a denial of the request unless the Owner extends the period to respond to the written request for additional time by written notice to the Contractor. While the Owner is considering the Contractor's request, the Contractor shall proceed with the diligent and prompt performance of the Work. Denial of additional time shall not entitle the Contractor to additional costs.

- C. The Contractor's failure to comply strictly with any or all parts of General Conditions Sections 10.03 and 10.04 shall be deemed to be:
  - 1. a conclusive and binding determination on the part of the Contractor that the event or condition causing the alleged delay or hindrance does not require additional time to achieve Substantial Completion; and
  - 2. a waiver by the Contractor of all Claims for additional time to achieve Substantial Completion as a result of the event or condition causing alleged delay or hindrance.

#### **Section 10.05 - Continuance of the Work**

Unless the Owner, in writing, permits otherwise, the Contractor shall proceed diligently and promptly with the performance of the Work while the Owner considers a notice of Claim filed pursuant to:

- A. General Conditions Sections 7.01D and 10.03;
- B. General Conditions Sections 10.01 and 10.03; or
- C. General Conditions Sections 10.02 and 10.03;

or while the Owner considers a request for additional time to achieve Substantial Completion filed pursuant to General Conditions Sections 10.03 and 10.04 or while the Owner considers any other Claim.

#### **Section 10.06 - Resolution of Claim**

- A. Any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion shall be final, binding and conclusive on the Contractor unless within fifteen (15) calendar days after receiving notice of the Owner's resolution, the Contractor files a written notice with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination. The written notice shall be filed in strict accordance with General Conditions Sections 10.03 C and 10.06. The Contractor's failure to comply strictly with these requirements shall be deemed to be a waiver by the Contractor of all Claims for additional compensation or damages included in the Claim and the request for additional time to achieve Substantial Completion.

B. After any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion, the Contractor shall proceed diligently and promptly with the performance of the Work whether the Contractor files a written notice with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination or the Contractor does not file such a written notice. Nothing in this paragraph waives any of the Owner's rights under the Contract.

- C. Contractor shall file no action or proceeding in a court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion unless the Contractor shall have strictly complied with all the requirements relating to the giving of notice and of

information with respect to such Claim or request for additional time to achieve Substantial Completion in this General Conditions Article 10. Nothing in this paragraph waives any of Owner's rights under the Contract Documents.

- D. Contractor shall file no action or proceeding in court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion until Contractor has achieved Physical Completion of the Work. Contractor agrees that any court action or proceeding challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion filed before Contractor has achieved Physical Completion of the Work is premature. Nothing in this paragraph waives any of Owner's rights under the Contract. The Owner, in its sole and exclusive discretion, may modify this paragraph by a Contract Amendment.
- E. At its sole and exclusive discretion, the Owner may resolve any Claim or a request for additional time to achieve Substantial Completion without waiving its rights under the Contract.

## **ARTICLE 11 – TERMINATION OR SUSPENSION**

### **Section 11.01 – Termination for Cause**

- A. In the event that any provision of the Contract is violated by the Contractor or by any Subcontractor, the Owner may serve written notice upon the Contractor and upon the Contractor's surety, if any, of the Owner's intention to declare a Contractor Default (defined in the Performance Bond) and terminate (1) the entire Contract, along with any uncompleted Job Orders issued under the Contract, or (2) solely the specific Job Order(s) governing the Work upon which the Contractor defaulted. Such notice shall contain the reasons for the intention to declare a Contractor Default and terminate the Contract and/or Job Order(s). The Contractor will be allowed an opportunity to show why the Owner should not declare a Contractor Default and why the Contractor's Contract and/or Job Order(s) should not be terminated for cause. If the violation shall not cease or arrangements satisfactory to the Owner are not made, the Owner, in writing, may declare a Contractor Default and the Contract and/or Job Order(s) shall terminate upon the date specified by the Owner in the declaration of Contractor Default. The Owner shall send the Contractor and the Contractor's surety, if any, written notice of and a copy of the declaration of Contractor Default and termination of the Contract and/or Job Order(s). In the event of a declaration of Contractor Default and termination of the Contract and/or Job Order(s), the Owner has the remedies set forth in the Performance Bond, the Contract, and all remedies at law or in equity.
- B. In the event of any such termination, the Owner may take over the Work and prosecute the Contract and/or Job Orders to completion and take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work. The Contractor and Contractor's surety shall be liable to the Owner for all costs incurred by the Owner.
- C. In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to General Conditions Section 11.02 – Termination for Convenience of Owner.

### **Section 11.02 - Termination for Convenience of Owner**

- A. The Owner, at any time, may terminate the Contract or any specific Job Order, in whole or in part. Any such termination shall be effected by delivering to the Contractor a written notice of termination specifying the extent to which performance of Work under the Contract or Job Order is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from the termination.
- B. The Owner shall pay the Contractor for Work performed by the Contractor and accepted by the Owner for the period extending from the end of the period covered by the last approved Application for Payment up to the effective date of the termination, an amount determined in accordance with General Conditions Article 7 – Changes in the Work. In no event shall the Contractor be entitled to compensation in excess of the total consideration of the Job Order(s). In no event shall Contractor be entitled to overhead or profit on the Work not performed.



- C. In the event of such termination the Owner may take over the Work and prosecute the Contract and/or Job Order(s) to completion and may take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work.

### **Section 11.03 - Owner's Right to do Work**

The Owner at any time may notify the Contractor that the Owner will have the Work of the Contract, Job Order(s) or any part thereof, performed by others, without terminating the Contract or Job Order(s), and without prejudice to any other right the Owner may have. The Owner may recover any and all costs related to such Work and deduct the value of such Work from the Contract amount. In the event the total costs related to such Work performed by others, or other costs associated with compliance with the Contract Documents, exceeds the available funds remaining in the Job Order, the Owner shall have the right to recover said funds from the Contractor.

### **Section 11.04 - Suspension of Work**

- A. Should the Owner determine that conditions exist such that it becomes necessary to suspend performance of all or any part of the Work, the Owner, at its sole discretion, shall issue to the Contractor a Suspend Work Order. Upon receipt of the order, the Contractor shall immediately comply with its terms and take reasonable steps to protect the Work covered by the order during the period of work suspension. The order shall contain the reason or reasons for suspension which may include, but is not limited to, latent field conditions, substantial program revisions, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired insurance, court order, public health emergency or acts of God.
- B. Upon receipt of a Suspend Work Order, the Contractor 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 Contractor specifically agrees that such suspension of the Work shall not increase the cost of the Work. However, to the extent that the suspension of the Work is through no fault of the Contractor, the Owner may consider requests for compensation provided that Contractor complies with General Conditions Article 10 – Claims and Disputes.
- D. The date of Substantial Completion of the Work may be extended by Change Order to compensate the Contractor for the time lost by the suspension.
- E. The Owner may terminate the Suspend Work Order by a written direction to the Contractor or through the issuance of a Resume Work Order, or may invoke any other provision of General Conditions Article 11 – Termination or Suspension.

### **Section 11.05 – Stoppage of Work**

- A. Should the Contractor fail to comply with the terms of the Contract Documents, including but not limited to insurance requirements, the Owner may at any time, in its sole discretion, issue a Stop Work Order requiring the Contractor to stop all or any part of the Work. Upon receipt of the order, the Contractor shall immediately comply with its terms and take reasonable steps to protect the Work covered by the order during the period of work stoppage. The Owner, at its option shall either:
1. Cancel the Stop Work Order after the Contractor has successfully remedied the cause of the Stop Work Order.
  2. Invoke any other provision of General Conditions Article 11 – Termination or Suspension.
- B. The Contractor shall not be entitled to an increase in time or costs as a result of the Stop Work Order. Owner may, in its sole discretion, consider requests for an increase in time or costs provided that the Contractor complies with General Conditions Article 10 – Claims and Disputes.

## **ARTICLE 12 -- BENEFICIAL OCCUPANCY**

### **Section 12.01 - Occupancy Prior to Substantial Completion**

- A. If, before Substantial Completion, the Owner desires Beneficial Occupancy of any part of the Work, the Owner shall have the right to do so, and the Contractor shall in no way interfere with or object to Beneficial Occupancy. Payment for operational costs of Project systems for the part of the Work subject to Beneficial Occupancy from the time of Beneficial Occupancy to Substantial Completion shall be borne by the Owner, unless otherwise specified by the Contract.
- B. Said Beneficial Occupancy (1) shall not constitute acceptance of space, systems, materials, or elements of the Work and (2) shall not affect the obligations of the Contractor for Work which is not in accordance with the requirements of the Contract or other obligations of the Contractor under the Contract.

The Contractor shall continue the performance of the Work in a manner that shall not unreasonably interfere with said use, occupancy, and operation by the Owner.

## **ARTICLE 13 -- INSPECTION AND ACCEPTANCE**

### **Section 13.01 - Access to the Work**

The Owner shall at all times have access to the Work and the Contractor shall provide proper facilities for access. If the Contractor schedules or performs any Work on a day or at a time which results in a Dormitory Authority employee assigned to the Project receiving overtime compensation or an additional charge to the Dormitory Authority from an Other Contractor for such Work, the Dormitory Authority, in its sole and exclusive discretion, may deduct such overtime compensation and such additional charge from moneys due the Contractor. If the Contractor intends to schedule any Work, including but not limited to any testing or inspection, outside the regular operating hours for the Project, the Contractor must provide the Owner and any Other Contractor involved in such Work at least fifteen (15) calendar days written notice of the scheduled date for such Work. The Owner, in its sole and exclusive discretion, may reduce the required number of days of notice for one or more occasions by written notice to the Contractor and to any involved Other Contractors.

### **Section 13.02 - Notice for Testing and Inspection**

If the Contract Documents, the Owner's instructions, laws, rules, ordinances, or regulations require that any Work be inspected or tested, the Contractor shall give the Owner a minimum of five (5) calendar days, unless otherwise specified, written notice of readiness of the Work for inspection or testing and the date fixed for said inspection or testing.

### **Section 13.03 - Reexamination of Work**

Reexamination of any part of the Work may be ordered by the Owner, and if so ordered the Work shall be uncovered by the Contractor. If said Work is found to be in accordance with the Contract, the Owner shall pay the cost of reexamination. If said Work is not found to be in accordance with the Contract, the Contractor shall pay the cost of reexamination and replacement.

### **Section 13.04 - Inspection of Work**

All Work, all materials whether incorporated in the Work or not incorporated in the Work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the Owner, and the Owner shall be the final judge of the quality and suitability of the

Work, materials, processes of manufacture, and methods of construction for the purposes for which said Work, materials, processes of manufacture, and methods of construction are used. Any Work not approved by the Owner shall be reconstructed, made good, replaced, or corrected immediately by the Contractor including all work of Other Contractors destroyed or damaged by said removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of material and workmanship by the Owner shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.

#### **Section 13.05 - Defective or Damaged Work**

If, in the opinion of the Owner, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work damaged or not performed in accordance with the Contract Documents, the Contract amount shall be reduced by an amount, which in the judgment of the Owner, shall be deemed equitable.

#### **Section 13.06 – Testing of Work**

All materials and equipment used in the Work shall be subject to testing in accordance with accepted standards to establish conformance with the Contract Documents and suitability for intended use or as directed by the Owner. Any Work covered or concealed without the approval or consent of the Owner, shall be uncovered for examination. No testing by the Owner or by a testing laboratory on behalf of the Owner relieves the Contractor of the responsibility to maintain quality control of materials, equipment, and installation to conform to the requirements of the Contract Documents. The Owner may order additional testing for any test results below specified minimums, above specified maximums or otherwise unacceptable. Additional cost for testing, professional services and any other expenses related to the additional testing shall be at the Contractor's expense. The Owner may deduct such costs from moneys due the Contractor.

#### **Section 13.07 - Final Completion**

No previous inspection shall relieve the Contractor of the obligation to perform the Work in accordance with the Contract Documents. No payment, either partial or full, by the Owner to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract Documents. The Contractor shall remedy all defects and deficiencies at the Contractor's expense, paying the cost of any damage to other Work, the work of Other Contractors and the property of the Owner or Client. No Work is completed and accepted until the Owner issues the Notice of Completion and Acceptance. Completion and Acceptance is limited to the Work described in the Notice of Completion and Acceptance.

#### **Section 13.08 - Guarantee**

The Contractor shall, in all respects, guarantee the Work to the Owner and be responsible for all material, equipment, and workmanship of the Work. The Contractor shall forthwith repair, replace or remedy in a manner approved by the Owner, at the Contractor's expense, any material, equipment, workmanship, or other part of the Work found by the Owner to be defective or otherwise faulty and not in compliance with the Contract Documents, which defect or fault appears during the minimum period of one (1) year, or such longer period as may be prescribed by the Contract Documents, from the date of Substantial Completion of the subject Job Order as determined by the Owner. For items of Work performed after the date of Substantial Completion, the minimum period of one (1) year in the preceding sentence shall begin with the date of Physical Completion of the subject Job Order. The Contractor shall also pay for any damage to the Work, any damage to the work of Other Contractors and any damage to the property of the Owner or Client resulting from said defect or fault.

## **ARTICLE 14 – PROTECTION OF PERSONS AND PROPERTY**

### **Section 14.01 – Site Safety and Protection**

- A. The Contractor and each Subcontractor shall comply with all applicable rules, 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 Contractor and each Subcontractor shall comply with all Client safety requirements. The Contractor and each Subcontractor shall comply with all City of New York safety requirements for Projects within the City of New York constructed in accordance with the Building Code of the City of New York.
- B. The Contractor and each Subcontractor, and only the Contractor and each Subcontractor, shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work and the Contractor shall require each Subcontractor to initiate, maintain and supervise its own safety precautions and programs for any portion of the Work for which the Subcontractor is responsible and to generate safety reports for days when safety inspections occur. The Contractor shall prepare and submit to the Owner a written safety plan for the Site showing how all safety requirements of applicable law and the Contract will be implemented for the duration of the Contract. The Contractor shall designate a responsible person at the Site whose duties shall include maintaining site safety pursuant to OSHA and any other applicable requirements including NYS EO 202, conducting weekly tool box meetings with its workers, implementing the Site safety plan and providing the Owner with a copy of such meeting minutes.
- C. The Owner shall provide the Contractor with copies of the Owner's safety orientation booklet. The Contractor shall provide a copy to each of its workers and to each worker of its Subcontractors prior to each worker starting Work. The Contractor shall maintain documentation that each worker received a copy of the Owner's safety orientation booklet prior to the worker starting Work.
- D. The Contractor and each Subcontractor shall, at all times: (1) guard the Owner's property from damage or loss in connection with the Work; (2) guard and protect the Contractor's Work and adjacent property; (3) replace or make good any said loss or damage unless said loss or damage is caused directly by the Owner; and (4) guard the lives and health of all persons on and in the vicinity of the Site.
- E. The Contractor and each Subcontractor shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work.
- F. The Contractor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this General Conditions Section 14.01.

### **Section 14.02 - Protection of Work**

- A. The Contractor shall be responsible for the safety, efficiency and adequacy of the Contractor's Work, plant, appliances, and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances, and methods.
- B. The Contractor shall have full responsibility to protect and maintain all materials on and off site in proper condition and forthwith repair, replace and make good any damage thereto until Physical Completion. The Contractor shall maintain an inventory of all materials for the Project that are delivered to the Site or approved for off-site storage facilities pursuant to General Conditions Section 8.01 G. All tools, spare parts, extra materials, attic stock and similar items delivered by the Contractor after Physical Completion shall be in proper condition and Contractor shall forthwith repair, replace, and make good any damage thereto until the later of Completion and Acceptance or the expiration of one year from delivery.
- C. The Contractor shall immediately report any loss, theft, burglary, vandalism, or damage of materials or installed work to the Owner by phone and email as soon as it is discovered. If vandalism, theft, or burglary is suspected as the cause of the loss, the Contractor shall notify Site security personnel and the municipal police, protect the place of the loss until released from protection by the Owner, and insure that no potential evidence relating to the loss is removed from the place of the loss.

- D. Any insurance claim alleging damage to the Work shall be submitted to the Owner pursuant to General Conditions Section 10.03.
- E. A claim for damage to the Work shall include the following in addition to the requirements of General Conditions Section 10.03:
  - 1. A copy of a police report (if applicable).
  - 2. A complete inventory of damages or lost items including:
    - a. Description of each item.
    - b. Purchase date and proof of delivery of each item.
    - c. Supplier from whom purchased.
    - d. Serial number (if applicable).
    - e. Price of each item.
  - 3. The name, address and telephone number of the person who controlled the lost or damaged items immediately before the loss or damage.
  - 4. The name, address and telephone number of the person who discovered the loss or damage.
  - 5. A written description of how the loss or damage occurred.
- F. The Owner may deny any claim from the Contractor under this General Conditions Section 14.02 if all items required by this General Conditions Section 14.02 are not provided or are not satisfactory to the Owner.

#### **Section 14.03 - Protection of Lives and Health**

- A. The Contractor and each Subcontractor shall be responsible for the safe performance of the Work and their Means and Methods of Construction and for any injury or loss that shall occur from a failure to meet such responsibility.
- B. The Contractor shall, within twenty-four (24) hours, notify the Owner and each Subcontractor shall, within twenty-four (24) hours, notify the Contractor of any incident, accident, illness, or injury that occurred on the Project Site. The Contractor shall follow-up and provide the Owner with a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any incident, accident, illness, or injury, a copy of the recorded OSHA Log and any and all reports and statements pertaining to such incident, accident, illness, or injury.
- C. The Contractor and each Subcontractor shall maintain a record of all cases of death, illness or injury requiring medical attention, hospitalization, or causing loss of time from work, arising out of and in the course of performance of Work of the Contract.
- D. The Contractor and each Subcontractor shall preserve and safeguard the area of any incident, accident, illness, or injury where the person required emergency medical treatment. The Contractor shall secure the area and not allow any material object or property to be altered, changed, moved, or removed from the area and post a person at the area to protect it. Safeguarding and protecting the area shall only be abandoned by the Contractor upon release by the Owner. The Contractor shall provide the Owner, within twenty-four (24) hours, a list of witnesses which includes the full name, home address,

occupation and telephone number of each person and all maintenance records, tool box meeting records and daily reports reflecting the work performed on the day of the incident. The Contractor shall provide, within twenty-four (24) hours of learning of the actual or potential existence of any other witnesses, the Owner with updated information which includes the full name, home address, occupation, and telephone number of each additional witness.

- E. If, in the performance of the Work, a harmful hazard is created for which appliances or methods of elimination have been approved by regulatory authorities, the Contractor shall install, maintain, and operate said appliances or methods.
- F. The Contractor and each Subcontractor shall provide, in accordance with the terms of the relevant insurance policies and, at a minimum, within five (5) calendar days, written notice to each of its liability insurers (primary, excess and umbrella) of any such incident, accident, illness, injury, or death on the Project Site on behalf of itself, the Owner, the Client, and the Construction Manager. This provision does not remove or supersede the obligation of each insured to provide notice to its liability insurers. The Contractor and each Subcontractor shall provide to the Owner, the Client and the Construction Manager, a copy of such notice at the time such notice is given to each insurer as well as confirmation of receipt of such notice by each insurer.

G. Drug Testing Policy:

- 1. The Contractor shall undertake or continue, and ensure each Subcontractor shall undertake or continue, a drug testing policy designed to maintain a safe working environment.
- 2. The Contractor shall submit to the Owner, within seventy-two (72) hours after the date of the execution of this Contract, its drug testing policy in connection with the Project. Owner reserves the right in its sole discretion to direct that the Contractor's drug testing policy, at a minimum, contains a requirement to drug test any employee involved in an incident on the Project involving any reported bodily injury or any property damage over \$1000 in value. Owner may also require random drug testing when appropriate in accordance with law along, with certifications to Owner regarding the status of the testing.
- 3. The Contractor shall not allow any worker or employee on a work site who is under, appears to be under, or is suspected of being under the influence of drugs or alcohol. Such employee shall not be allowed on site until drug testing has occurred and Owner has approved.

H. Professional Conduct:

- 1. The Contractor acknowledges and agrees that professionally appropriate conduct is a material obligation of this Contract. All employees, officers and representative of Contractor shall conduct themselves professionally in all communications in connection with the Project, including but not limited to communications with Subcontractors and other contractors.
- 2. Use of abusive, threatening, vulgar or other offensive language, whether written or oral, is a breach of the obligation set forth in paragraph (1) of this section 14.03 (H).
- 3. Contractor will receive a warning in writing from Owner upon breach of the obligation set forth paragraph (1) of this section 14.03 (H). Contractor agrees that any subsequent breach of paragraph (1) of this section 14.03 (H) committed after receipt of the written warning is grounds for the Owner to terminate this Contract for cause, or for the Owner to avail itself of any other remedy at law.
- 4. The Contractor shall include the provisions set forth in paragraphs (1) and (2) of this section 14.03 (H) in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.



I. Sexual Harassment:

1. As a condition to the award of this Contract, Contractor affirms that it has implemented (i) a written policy addressing sexual harassment prevention in the workplace and that (ii) it provides or will provide annual sexual harassment training to all of its employees, both of which meet the requirements of New York law including Section 201-g of the New York State Labor Law. The policy shall equal or exceed the standards set forth by the New York Department of Labor pursuant to the model sexual harassment prevention policy in connection with New York Labor Law Section 201-g (1). The Contractor shall ensure that all its employees receive a copy of the sexual harassment prevention policy pursuant to New York law and shall provide a copy to owner upon request.
  2. The Contractor shall submit to the Owner, within seventy-two (72) hours after the date of the execution of this Contract, its sexual harassment prevention policy. The Owner may direct Contractor to revise its sexual harassment prevention policy to the extent that the Owner determines that the policy fails to meet the standards set forth in paragraph (1) of this section 14.03 (I). Owner's failure to direct Contractor to revise its policy does not constitute a determination or representation that the policy satisfies New York law nor that the policy meets the standards set forth in paragraph (1) of this section 14.03 (I).
  3. The Contractor shall include the provisions set forth in paragraph (1) of this section 14.03 (I) in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.
- J. The Contractor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this General Conditions Section 14.03.
- K. Failure of the Contractor to comply with provisions of this General Conditions Section 14.03 shall be deemed a material breach of Contract and the Owner may impose a payment penalty on the Contractor for any act of non-compliance. The payment penalty shall not exceed one twentieth (1/20) of the contract price or a maximum of One Thousand Dollars (\$1,000) for each time the Contractor fails to perform or to provide the information, reports, forms, etc. required in this General Conditions Section 14.03. This payment penalty is not exclusive; the Owner may avail itself of any other contractual remedy available.

**Section 14.04 - Risks Assumed by the Contractor**

The Contractor agrees that each duty set forth in this General Conditions Section 14.04 is separate, distinct, and independent from the other duties in this General Conditions Section 14.04.

- A. To the fullest extent permitted by law, the Contractor solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, of the Owner, of the Client, of any Subcontractor, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the performance of the Work, whether said risks are within or beyond the control of the Contractor and whether said risks involve any legal duty, primary or otherwise, imposed upon the Owner or Client, regardless of the presence or absence of culpable conduct on the part of the Contractor, excepting only risks which arise from faulty designs as shown by the Drawings and Specifications or from the percentage of negligence attributed to the Owner, the Client or the Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the loss, damage or injuries hereinafter set forth:

To the fullest extent permitted by law, the risk of loss or damage, including direct or indirect damage or loss, of whatever nature to the Work or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Owner, the Construction Manager, the Contractor or any Subcontractor, materialman or worker performing services or furnishing materials for the Work regardless of the presence or absence of any culpable conduct on the part of the Contractor, excepting only risks which arise from the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the loss or damage. The Contractor shall bear said

risk of loss or damage until Physical Completion or until completion or removal of said plant, equipment, tools, materials or property from the Site and the vicinity thereof, which ever event occurs last. In the event of said loss or damage, the Contractor immediately shall repair, replace, or make good any said loss or damage.

1. To the fullest extent permitted by law, the risk of claims, just or unjust, by third persons against the Contractor, the Owner, the Client, or the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Contractor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the operations of the Contractor or any Subcontractor or presence at or in the vicinity of the Site of the Contractor or any Subcontractor, regardless of the presence or absence of any culpable conduct on the part of the Contractor. The Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained prior to Physical Completion of the Work excepting only the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the deaths, losses, damages or injuries, regardless of the presence or absence of any culpable conduct on the part of the Contractor. The Contractor shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained after Physical Completion resulting from the Contractor's negligence or alleged negligence.
2. To the fullest extent permitted by law, the Contractor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the Contractor or otherwise, and to all property, arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Contractor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Contractor's or any Subcontractor's operations or presence at or in the vicinity of the Site, regardless of the presence or absence of any culpable conduct on the part of the Contractor. If any person shall make said claim for any damage or injury, including death resulting therefrom, or any alleged breach of any statutory duty or obligation on the part of the Owner, the Client, Construction Manager, or any of the servants and employees of the Owner, Client or Construction Manager, the Contractor shall indemnify and hold harmless the Owner, the Client, the Construction Manager, and any of such servants and employees, for any and all loss, damage or injury that the Owner, the Client Construction Manager, or any such servants and employees, may sustain as the result of any claim, provided however, the Contractor shall not be obligated to indemnify and hold harmless the Owner, the Client Construction Manager, and any such servants and employees for their own negligence, if any. In the event that any negligence is attributed to the Owner, Client, Construction Manager or any such servants or employees, then that particular entity or person shall be indemnified and held harmless for all of its liability minus the percentage of negligence attributed to that particular entity or person.
3. Notwithstanding any contrary provision of the Contract, and to the fullest extent permitted by law, the Contractor shall, within ten (10) calendar days of notice from the Owner, Client or Construction Manager, assume the obligation to defend and represent the Owner, the Client, the Construction Manager, and any of the servants and employees of the Owner, Client or Construction Manager, with counsel selected by the Owner, in all claims by third parties arising out of or alleged to arise out of or as a result of or in any way associated with the duties, obligations or requirements of the Contractor or any Subcontractor pursuant to the Contract, or the presence of the Contractor or any Subcontractor on the Site. This obligation to defend applies immediately and is separate and independent of and distinct from the enforceability of any obligation of Contractor or any Subcontractor to indemnify or hold harmless the Owner, the Client, the Construction Manager and the servants or employees of the Owner, Client, and Construction Manager. The Contractor's obligation to defend includes, but is not limited to, payment of any legal fees associated with defending the Owner, the Client, the Construction Manager and any such servants and employees, all costs of investigation, expert evaluation, and any other costs. If the Contractor fails to so defend and represent the Owner, the Client, the Construction Manager, or any such servants and employees with counsel selected by the Owner, the Owner may proceed to defend and represent itself, the



Client, the Construction Manager and any such servant and employee with counsel selected by Owner. Contractor shall make payment of the selected counsel's fees and expenses and all other defense costs incurred by Owner immediately upon receipt of Owner's demand.

- B. The Contractor's obligations under this General Conditions Article 14 - Risks Assumed by the Contractor shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Contractor shall notify its insurance carrier within twenty-four (24) hours after receiving a written notice of loss or damage or claim from the Owner, the Client, or the Construction Manager. The Contractor shall make a claim to its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner, the Client or Construction Manager including those of being a named insured or an additional insured where applicable.
- C. Neither Completion and Acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this General Conditions Article. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall not be deemed to limit the effect of the provisions of this General Conditions Article or to imply that the Contractor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this General Conditions Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor or particular claims for which the Contractor is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of said enumerations.
- D. Notwithstanding any provision of the Contract to the contrary, and to the fullest extent permitted by law, if the Contractor does not fulfill one or more of Contractor's obligations under General Conditions Articles 14 and 15 to defend, indemnify, hold harmless, and procure insurance for the Owner, Client and Construction Manager, and the Owner, Client or Construction Manager commences a court action to enforce one or more of the Contractor's obligations to defend, indemnify, hold harmless and procure insurance for the Owner, Client and Construction Manager, the Contractor, in addition to its other obligations, shall pay the costs of the Owner, Client and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses and court fees. If the Owner, Client, or Construction Manager commences a court action against an insurance company to obtain coverage under an insurance policy which the Contractor represented would provide coverage to the Owner, Client or Construction Manager, the Contractor, in addition to its other obligations, shall pay the costs of the Owner, Client, and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses, and court fees.

## **ARTICLE 15--INSURANCE AND BONDS**

### **Section 15.01 - General Provisions**

- A. The Contractor and Subcontractors 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.
- B. The Contractor and Subcontractors shall maintain in force all insurance required to be procured by them under this Contract until issuance of the Notice of Physical Completion by the Owner except where this Contract requires an insurance policy to be maintained for a period beyond issuance of the Notice of Physical Completion in which case the Contractor and Subcontractors shall maintain such insurance policy in force for the specified period beyond issuance of the Notice of Physical Completion.
- C. All insurance required to be procured and maintained by the Contractor and Subcontractors under this Contract 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.
- D. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract 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.

- E. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract 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.
- F. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall be written on an occurrence basis except where this Contract explicitly allows otherwise.
- G. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the Owner and the Client shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the Contractor or Subcontractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. At any time this Contract requires the Contractor or any Subcontractor to maintain an insurance policy, the Owner may require the Contractor or any Subcontractor to provide proof, acceptable to the Owner in its sole discretion, that the Contractor or Subcontractor has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the Contractor or Subcontractor may be liable under the claims pending or reasonably possible against the Contractor or Subcontractor at the time the Owner requires the proof. A failure of the Contractor or Subcontractor to provide such proof is a failure of the Contractor or Subcontractor to maintain the insurance required by the Contract or to provide the Owner with evidence of valid and in-force insurance coverage required by the Contract for purposes of General Conditions Section 15.05.
- H. All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that there shall be no right of subrogation against the Owner, Client, or Construction Manager. If any of the Contractor's policies or any of the policies of any Subcontractor prohibit such a waiver of subrogation, the Contractor or Subcontractor 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 and Construction Manager.
- I. Each liability and protective liability insurance policy required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that the coverage afforded the Owner, Client and Construction Manager 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 or by the Construction Manager. Any other insurance policy maintained by the Owner, by the Client or by the Construction Manager shall be in excess of and shall not contribute with the Contractor's or Subcontractor's insurance policy, regardless of the "other insurance" clause contained in the Owner's, Client's or Construction Manager's own policy of insurance or the Contractor's or Subcontractor's insurance policies.
- J. Any other Contract Document, including but not limited to the Information for Bidders, but excluding Change Orders, may require any of the Contractor and Subcontractors to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the Owner or Client.
- K. Notwithstanding any other provision of the Contract, the Owner, in a Change Order or Contract Amendment, may require the Contractor and any or all Subcontractors to provide, at the expense of the Owner, any other form or limit of insurance in addition to the insurance requirements of the original Contract necessary to secure the interests of the Owner, Client, or Construction Manager.
- L. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Client, the Contractor or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the Contractor or any Subcontractor from any of the obligations or risks accepted by the Contractor and Subcontractors 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 and Construction Manager.

- M. All provisions of General Conditions Article 14 - Protection of Persons and Property and General Conditions Article 15 – Insurance and Bonds are to the fullest extent permitted by law. One purpose of this Contract is to allocate, to the fullest extent permitted by law, all risk of loss to the Contractor, each Subcontractor, and the insurers of each. Each insurance company from which Owner or Client has directly purchased an insurance policy is a third-party beneficiary of the Contractor's and each Subcontractor's obligations to procure insurance.
- N. Contractor is responsible for ensuring that each Subcontractor obtains and maintains in the required amount each type of insurance policy required by this Contract and that such insurance policy provides the Owner, Client and Construction Manager with the coverage required by this Contract.
- O. Contractor agrees and acknowledges that, because the Contractor (and not the Owner or Client) is responsible for performance of the duties and obligations set forth in this Contract for completion of the Project, the Contractor, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the Owner and Client.

#### **Section 15.02 - Submission of Insurance**

- A. Owner will not execute the Contract unless the Contractor shall submit to the Owner or the Owner's designee proof of insurance in such forms as requested and deemed acceptable by the Owner, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide a copy of each insurance policy required by the Contract 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 Contractor 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 Contractor and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- B. The Contractor 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, and Construction Manager, and such other documents requested by the Owner as proof of insurance for the Contractor. All insurance submittals must be approved by the Owner or the Owner's designee prior to the Contractor's commencement of Work.
- C. Upon the Owner's request, the Contractor shall submit to the Owner or Owner's designee proof of insurance for one or more Subcontractors, in such forms as requested and deemed acceptable by the Owner, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Contractor shall provide a copy of each insurance policy of the Subcontractor or Subcontractors required by the Contract 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 Subcontractors. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance of the Subcontractors, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the Owner by the Contractor, constitute a warranty by the Contractor, the Subcontractor and the Subcontractor's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- D. Upon request of the Owner made any time after bids are opened, the Contractor shall submit insurance certificates (Accord 25 and 855, 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, and Construction Manager, and such other documents requested by the Owner as proof of insurance for a Subcontractor. Owner may request proof of insurance for one or more Subcontractors at the same or at different times and may request proof of insurance for a particular Subcontractor as often as Owner, in its sole and exclusive discretion, determines is necessary.

### Section 15.03 - Insurance Provided by Contractor

- A. Prior to award of the Contract, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract all of the insurance required under this Contract. Each Subcontractor shall procure, at its sole cost and expense, prior to the Contractor submitting to the Owner the name of such Subcontractor and prior to such Subcontractor commencing performance of any of the Work, and each Subcontractor shall maintain in force at all times required by this Contract all of the insurance required under this Contract. The insurance that the Contractor and each Subcontractor shall procure and maintain under this Contract includes, but is not limited to, the following:
1. 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**):
    - a. 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.
    - b. 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.
    - c. 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 Contractor's Group Self Insurance Administrator shall provide a completed form.
    - d. 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 Contractor's Self Insurance Administrator shall provide a completed form.
  2. 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:
    - a. DB-120.1 (September '15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
    - b. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
    - c. 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.
  3. Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the Contractor or Subcontractor for bodily injury, property damage, and personal/advertising injury arising from performance of the Work or operations or presence at or in the vicinity of the Site of the Contract. 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:

- a. If the Contractor or Subcontractor proposes the use of a policy other than the ISO form CG 00 01 12 07, the Contractor or Subcontractor 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 Contractor or Subcontractor 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.
- b. ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority, Client, any other entities as required by the Contract Documents, and if applicable, the Construction Manager, 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.
- c. If the Contractor or Subcontractor 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 Contractor or Subcontractor 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. Contractor and Subcontractor 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.
- d. Additional insured status for Owner, Client, Construction Manager and any other entities as required by the Contract Documents shall apply during the Products/Completed Operations phase as well as during the course of performance of the Work.
- e. The policy provisions required by General Conditions Section 15.01.
- f. Excavation, Collapse and Underground Hazards.
- g. Independent contractors/subcontractors.
- h. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Contract, and covering tort liability of another assumed in a contract.
- i. 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.
- j. Premises liability.
- k. Defense and/or indemnification obligations, including obligations assumed under this Contract.
- l. Cross liability for additional insureds.
- m. Contractor and Subcontractor means and methods.
- n. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
- o. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
- p. The maximum deductible or self-insured retention shall be \$50,000.
- q. No endorsement or provision in the policy shall exclude coverage for Owner, Client, or Construction Manager for any liability when the injured party is an employee of Contractor or any Subcontractor.



- r. No endorsement or provision in the policy shall require privity of contract between the Owner and Subcontractor or between the Client and the Contractor or Subcontractor or between the Construction Manager and the Contractor or Subcontractor in order for the Owner, the Client, or the Construction Manager to have coverage as an insured on such insurance policy.
  - s. If the Contractor or Subcontractor must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.
  - t. No endorsement or provision in the policy shall have a height limitation or exclusion.
  - u. No endorsement or provision in the policy shall have a classification exclusion with respect to work performed for the Owner, Client, and Construction Manager.
  - v. Owner, Client, and Construction Manager shall be covered for any and all liability arising out of acts or omissions of Contractor and any Subcontractor.
4. Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least \$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract 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.
5. 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 paragraphs, 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 paragraphs. 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 paragraphs. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the Owner or Client or Construction Manager or any other additional insured. Any other insurance maintained by the Owner, the Client, the Construction Manager, or any other additional insured shall be in excess of and shall not contribute with the Contractor's or Subcontractor's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the Owner's or Client's or Construction Manager's or other additional insured's own policy of insurance or the Contractor's or Subcontractor's insurance policies.
6. The Contractor shall secure, pay for, and maintain property insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed, or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not render the Owner, Client and, if applicable, the Construction Manager and other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents or their agents and employees responsible for any losses; and the Owner, Client and, if applicable, the Construction Manager and other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents and their agents and employees shall have no such liability.
- B. Notwithstanding any other provision of the Contract to the contrary and to the fullest extent permitted by law, Contractor shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the Owner, the Client or the Construction Manager in any action brought by or against the Owner, Client or Construction Manager concerning insurance coverage owed to Owner, Client or Construction

Manager by any insurer for which Contractor or any Subcontractor represented that the Owner, Client and Construction Manager would be an insured or would benefit in any way if a claim was brought against Owner, Client and Construction Manager.

#### **Section 15.04 - Other Insurance Provided by Contractor**

The Contractor and each Subcontractor shall also procure and maintain as required by General Conditions Sections 15.01 B and 15.03 A the following insurance:

- A. United States Longshore and Harbor Workers' Compensation Act and Jones Act: When, to perform the Work, the Contractor or any Subcontractor 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 Contractor and any such Subcontractor shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.
- B. Contractor's Pollution Liability insurance: When the Work 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 Contractor or any Subcontractor 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, and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.
  - 2. The policy provisions required by General Conditions Section 15.01.
  - 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 or Construction Manager arising from the Work.
  - 5. Coverage shall be provided until three years after the Owner issues the Certificate of Physical Completion.
- C. Railroad Protective Liability insurance: If any Work of the Contract 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 Contractor 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 paragraph, 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 Contractor shall provide a Railroad Protective Liability insurance policy, the Contractor and any Subcontractor 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. Professional Liability insurance: Each of the Contractor and any Subcontractor performing any Work which involves delegation of design shall procure and maintain Error and Omissions Liability Insurance for the delegated design Work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the Contractor or Subcontractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render

professional services required by this Contract. 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 Contractor or Subcontractor, 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.

- E. Unmanned Aircraft System (UAS) Insurance: Any Contractor or Subcontractor proposing the use of any Unmanned Aircraft System for any purpose on a Project, including but not limited to investigation, surveying, photography, inspections or observation, shall comply with all of Owner's policies and procedures regarding such use and shall provide coverage, in the form of an Unmanned Aircraft System (UAS) endorsement to the Commercial General Liability Coverage required above or Aircraft Liability Coverage with a minimum limit of \$1,000,000. Such coverage shall name the Owner and any required third parties as additional insureds.
- F. Marine Protection & Indemnity insurance and Hull & Machinery insurance: Each of the Contractor and any Subcontractor performing any Work 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 Contractor shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract with a minimum limit of \$2,000,000. The Owner, the Client and, if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:
  - 1. The policy provisions required by General Conditions Section 15.01.
  - 2. A maximum deductible or self-insured retention of \$50,000.
  - 3. Coverage shall be provided until the Owner issues the Certificate of Physical Completion.
  - 4. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client, and if applicable, the Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.

#### **Section 15.05 - Stop Work Order - Insurance**

- A. 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 Contractor 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.
- B. Failure of the Contractor or any Subcontractor to maintain the insurance required by the Contract or to provide the Owner or the Owner's designee with evidence of valid and in-force insurance coverage required by the Contract shall result in a Stop Work Order pursuant to General Conditions Article 11 – Termination or Suspension and/or withholding of payment to the Contractor.
- C. 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 Contractor or Subcontractor shall immediately cease Work on the Project. The Contractor or Subcontractor shall not resume Work on the Project until authorized to do so by the Owner or the Owner's designee.
- D. Any delay or time lost as a result of the Contractor or Subcontractor not having proper insurance required by this General Conditions Article or not providing the Owner or Owner's designee with evidence of valid and in force insurance required by the Contract shall not give rise to a delay Claim or any other Claim against the Owner or the Owner's designee. Further, the Contractor may be liable to other contractors for costs incurred by reason of the Contractor's or Subcontractor's failure to provide insurance.



## Section 15.06 – Builder’s Risk

- A. The Owner will provide Builder’s Risk insurance for all projects, except for those projects listed in paragraph B of this General Conditions Section 15.06.
1. The Owner shall, except as otherwise specified, at all times beginning with the Notice to Proceed and until Substantial Completion, procure and maintain, at the Owner’s sole cost and expense, “All Risk” Builder’s Risk insurance. The Contractor and Subcontractors will be covered for the Work of the Contract, except losses up to and including the deductible shall be borne by the Contractor. The Owner shall, at the Owner’s sole discretion, have the power to adjust and to settle with the insurer any loss or claim under the Builder’s Risk insurance. Reimbursement for loss, if any, shall be made payable to the Owner. The deductible is stated in the Information for Bidders.
  2. Coverage shall include sub limits for property in transit and for property in storage on and off the Site. Specific higher limits for transit or for storage may be available as circumstances may require upon written request by the Contractor or any Subcontractor to the Owner at least thirty (30) calendar days before such higher limit would take effect if the request is granted. Owner in its sole and exclusive discretion may grant or deny the request for a higher limit for transit or storage. If the Owner denies the request, the Contractor or Subcontractor shall have no Claim against the Owner for any cost or damage. If the Owner grants the request, the Owner may condition the grant upon the Contractor or Subcontractor paying the additional cost for the higher limit for transit or storage.
  3. No coverage shall be provided to the Contractor or any Subcontractor under any property insurance policy of the Owner or Client which only covers completed, occupied structures.
- B. The Contractor shall procure and maintain Builder’s Risk insurance for all OMH, OPWDD, OASAS, NYCHA, and HTFC-GOSR projects, or when otherwise specified, as provided below, and shall be reimbursed for the direct cost of the insurance without markup.
1. The Contractor shall maintain until the date of Physical Completion, an All Risk Builder’s Risk Completed Value Form insurance policy, with coverage for at least the value of the Work of the Contract except for excavation work, planting and seeding, and Work buried in the ground other than wiring and walking tunnels, but including debris removal costs and architect, engineering and other costs to evaluate damage and provide any design or other services necessary to correct or minimize damage in the event of damage to the Work covered by the policy or such higher amount of coverage as required by the Owner in this Contract. Debris removal costs shall include demolition as may be necessary by the operation of any law, ordinance, or regulation. The policy shall cover property of the Owner or Client when in the Contractor’s care, custody, or control. The policy shall name as insureds the Owner, Client and Contractor and shall include such soft costs coverage for the Owner and Client as specified in this Contract. The extended coverage endorsement may include a loss deductible of \$10,000 or less. The Contractor shall bear all losses up to and including the deductible provision.
  2. Coverage shall also include sub limits for equipment, material, and other property in transit or in storage on or off the Site. Specific higher limits of coverage for property in transit or storage, at Contractor’s expense, may be required by the Owner due to circumstances of the Project.
  3. Each Builder’s Risk insurance policy shall include the following endorsement:  
  
*“It is made a condition of this insurance that until the Owner issues the Notice of Physical Completion to the Contractor, occupancy of the premises shall not require consent of the insurer, nor shall such occupancy be the basis for a rate adjustment.”*
  4. Builder’s Risk insurance policy shall name the Dormitory Authority and the Contractor Loss Payees in order of precedence, as their interests may appear and shall run until the date of Physical Completion. Policies expiring on a fixed date before Physical Completion shall be renewed not less than thirty (30) calendar days before such expiration date. Such policy shall not be changed by endorsement without the knowledge and consent of the Owner and in particular, shall provide that

no notice of cancellation by the insurer shall be effective until sixty (60) calendar days after such notice is received by the Owner. If the policy is issued by a mutual insurance company, the policy shall provide that the Owner and the Client shall not be liable for any premium or assessment under the policy; the Contractor shall be responsible for all premiums and assessments.

5. The Owner may withhold the Contractor's payment for Work which is required to be insured until original binder or policies for the Builder's Risk insurance are provided to the Owner pursuant to General Conditions Section 15.06.

#### **Section 15.07 - Bonds Provided by Contractor**

- A. If the Contractor's Proposal is one hundred thousand dollars (\$100,000.00) or more or if the Contractor's Proposal plus Job Order Amount(s) under this Contract are cumulatively one hundred thousand dollars (\$100,000.00) or more, the Contractor shall provide (1) a Performance Bond in the form attached hereto in an amount at least equal to 100% of the Contractor's Proposal as security for the faithful performance of the Work of the Job Order, and (2) the Contractor shall also provide a Payment Bond in the form attached hereto in an amount at least equal to 100% of Contractor's Proposal for the payment of all persons performing labor or providing materials in connection with the Work of the Job Order. The Contractor shall execute the Performance Bond form and the Payment Bond form included in the Contract Documents and provide such bonds to Owner within five (5) workdays of the date that the Contractor receives notice that the Contractor's Proposal is accepted by the Owner. Owner's receipt from Contractor of such Performance and Payment Bonds acceptable to Owner is a strict condition precedent to the issuance of the Job Order and the Notice to Proceed.
- B. If at any time the Owner, in its sole and exclusive discretion, shall become dissatisfied with any surety or sureties upon the Performance Bond or the Payment Bond, or if for any other reason said bonds shall cease to be adequate security to the Owner, the Contractor shall, within five (5) calendar days after written notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.
- C. The surety company, on all bonds, shall be authorized 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.

### **ARTICLE 16 -- GENERAL PROVISIONS of the CONTRACT**

#### **Section 16.01 - General Law Provisions**

- A. This Contract and its enforcement, and any controversy arising out of or relating to the making or performance of this Contract, shall be governed by and construed in accordance with the law of the State of New York, without regard to the New York principles of conflicts-of law and except where the United States supremacy clause requires otherwise.
- B. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and shall be enforced as though so included therein.
- C. The Contractor shall comply fully with all applicable laws, rules, and regulations, and as applicable, Building Code of New York State or Building Code of the City of New York.
- D. The Contractor agrees that the Contract shall be deemed executory to the extent of moneys available from either: (1) the proceeds of bonds issued by the Dormitory Authority for the Contract, (2) moneys made available by the Client to the Owner for the Contract, (3) other moneys made available to the Owner from whatever source specifically for the Contract and no liability shall be incurred by the Owner beyond moneys available therefore.
- E. The relationship created by the Contract between the Owner and the Contractor is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Contractor nor is it to be construed as, in any way or under any circumstances, creating or appointing the Contractor as an agent of the Owner for any purpose whatsoever.

- F. Except as provided herein, this Contract and each and every provision hereof and thereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the Owner, the State of New York, the Client, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the Contract; however, it is understood that the Client is an intended third-party beneficiary of the Contract for the purposes of recovering any damages caused by the Contractor.
- G. The Contractor shall not assign the Contract in whole or in part without prior written consent of the Owner. Any attempt to assign the Contract in whole or in part without prior written consent of the Owner is null and void. As a condition to consent to the assignment, the Owner shall require each proposed assignee to establish, to the satisfaction of the Owner in its sole and exclusive discretion, that the assignee is responsible and, if applicable, has the experience to perform the Work. If the Owner consents to an assignment and if the Contractor assigns all or part of any moneys due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that the Contractor and assignee agree that the assignee's right in and to any moneys due or to become due to the Contractor shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work. The Owner reserves the right to assign this Contract in whole or in part without the consent of the Contractor. Unless otherwise agreed by the Parties hereto in a separate writing, no permitted assignment described in this Section shall relieve the assigning Party from any of its obligations under this Contract. However, the assignee may be required by the assigning Party to agree to indemnify and hold harmless the assigning Party from some or all of its obligations under this Contract.
- H. This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
- I. The Owner is exempt from the terms of fair-trade agreements for sales to the Contract.
- J. Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which might be committed by the Owner, the Contractor agrees that no default, act or omission of the Owner shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the Contract or to suspend or abandon performance of the Contract; and the Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be or become entitled to because of any wrongful act or omission of the Owner saving only the Contractor's right to money damages.
- K. No action or proceeding shall lie or shall be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any Claim arising out of or based upon the Contract, relating to the giving of notices or information.
- L. No action or proceeding shall lie in favor of or shall be maintained by the Contractor against the Owner unless such action shall be commenced within one (1) year after the earliest following event:
1. The date the Owner executes the Notice of Physical Completion.
  2. Receipt, by the Owner, of the Contractor's final Application for Payment, if no Notice of Physical Completion is issued.
  3. The date of termination if the Owner terminates the Contract.
- M. The Owner and Contractor agree to submit to the exclusive jurisdiction of the Commercial Division, New York Supreme Court, which shall hear any dispute, Claim or controversy arising in connection with or relating to this Contract, including, but not limited to the validity, breach, enforcement, or termination thereof.
- N. No action or proceeding shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue. The Contractor expressly waives the right to a trial by jury in any action or proceeding brought against the Owner.

- O. If the Contractor obtains a judgment against the Owner in any action or proceeding, the Contractor agrees to accept no more than three percent (3%) interest, per annum, on the amount of the judgment.
- P. Neither Contractor nor its Subcontractors shall place or maintain, or permit to be placed or maintained, any sign, bill or poster on or about the Premises without the prior consent of Owner's Representative.
- Q. Each Party has reviewed and discussed this Contract with counsel and agrees that this Contract shall not be construed by applying any rule of construction providing for interpretation against the drafting Party.

#### **Section 16.02 - Diesel Emissions Reduction**

- A. The Contractor shall certify that heavy duty vehicles, as defined in the NYS Environmental Conservation Law (ECL) Section 19-0323 and Title 6 of the New York Codes Rules and Regulations, Part 248 (6 NYCRR 248), will comply with the rules, regulations and provisions pursuant to ECL Section 19-0323, and 6 NYCRR 248, which requires the use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel to the extent required by law unless specifically waived by the NYS Department of Environmental Conservation (DEC). Qualification for a waiver will be the responsibility of the Contractor.
- B. Annually, as required by DEC, but no later than March 1st, the Contractor shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Contractors Annual Report Form, found on the DEC website <http://www.dec.state.ny.gov> for vehicles used on the Project for the preceding calendar year.
- C. The Contractor shall certify to the Owner, and submit with each Application for Payment, the Contractor and Subcontractor Certifications form, which states that the Contractor agrees to comply with the provisions of General Conditions Section 16.02.

#### **Section 16.03 – State and Federal Labor Law Provisions**

- A. All applicable provisions of NYS Labor Law shall be carried out in the performance of the Work.
- B. The Contractor specifically agrees, as required by NYS Labor Law, Sections 220 and 220-d as amended, that:
  - 1. No worker, in the employ of the Contractor, any Subcontractor or any other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day and more than five (5) days in any one week, except in the extraordinary emergencies set forth in NYS Labor Law.
  - 2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by NYS Labor Law. Each laborer, worker or mechanic employed by the Contractor, any Subcontractor or any other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be paid not less than the prevailing rate of wages as defined by NYS Labor Law and shall be provided not less than the supplements as required by NYS Labor Law.
  - 3. The minimum hourly rate of wage to be paid and supplements provided shall be not less than that required by the NYS Labor Law and as shall be designated by the Commissioner of Labor of the State of New York.
  - 4. The Contractor and all Subcontractors 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 workers engaged in the performance of the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by any worker so engaged.
  - 5. The Contractor and all Subcontractors shall provide each worker a written notice of the prevailing wage rate for each of the worker's particular job classifications on each pay stub and, as required by the NYS Labor Law, written notice that includes the telephone number and address for the

Department of Labor and a notice informing all workers of their right to contact the Department of Labor if a worker is not receiving the proper prevailing rate of wages and/or supplements for a worker's particular job classification.

6. The Contractor shall be responsible for obtaining prevailing wage rate updates directly from the NYS Department of Labor, either by accessing its website <http://www.labor.state.ny.us> or a written request to the Bureau of Public Works.
- C. The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeyman mechanics as an individual registered in an apprenticeship program which is duly registered with the Commissioner of Labor of the State of New York in conformity with the NYS Labor Law. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the NYS Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations.
- D. All workers of the Contractor and all Subcontractors shall be paid in accordance with the provisions of the NYS Labor Law. The Contractor and all Subcontractors shall submit to the Owner original copies of the Contractor and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request. The Contractor and all Subcontractors shall prepare and keep original payrolls or transcripts thereof in compliance with NYS Labor Law Section 220, subdivision 3-a, and shall file transcripts of such payrolls with the Owner as required by NYS Labor Law Section 220, subdivision 3-a. Filing the transcripts of such payrolls with the Owner as required by NYS Labor Law Section 220, subdivision 3-a is a condition precedent to payment of any sums due and owing Contractor or any Subcontractor for Work performed upon the Project.
- E. The Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by the Contractor or any Subcontractor, the Owner shall withhold from the Contractor out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract and the wages actually paid such worker for the total number of hours worked, and that the Owner may disburse such amount so withheld by the Owner for and on account of the Contractor to the worker to whom such amount is due. The Contractor further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the amounts and percentages to be retained by the Owner pursuant to other provisions of the Contract.
- F. Pursuant to subdivision 3 of Section 220 and Section 220-d of the NYS Labor Law the Contract shall be forfeited and no sum paid for any Work done thereunder upon a Contractor's or Subcontractor's second conviction for willfully paying or providing less than:
  1. The stipulated wage scale or supplement as established by the fiscal officer.
  2. The stipulated minimum hourly wage scale and supplements as designated by the Commissioner of Labor of the State of New York.
- G. If the project is Federally funded in part or whole and therefore subject to the requirements of the Davis Bacon Act, the U.S. Department of Labor's government-wide implementation of the Act, or to Federal program legislation, the Contractor shall pay the higher of either NYS Department of Labor prevailing wage rates or wages established for the locality of the project by the U.S. Department of Labor.
- H. The Contractor specifically agrees that all workers engaged on the Site, whether employees of the Contractor, Subcontractor, or other person performing or contracting to do any part of the Work, shall be certified, prior to performing any Work, as having successfully completed at a minimum the OSHA 10-hour construction safety and health course as required by NYS Labor Law Section 220-h, unless additional certifications, courses or training are required by the project specific jurisdiction or as required to complete the Work of the Contract.



#### **Section 16.04 - Nondiscrimination**

- A. To the extent required by Article 15 of the NYS Executive Law (also known as the Human Rights Law) and all other NYS and United States statutory and constitutional non-discrimination provisions, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence status.
- B. If the Contractor is directed to do so by the Owner, the Contractor shall request each employment agency, labor union or authorized representative of workers with which the Contractor has a collective bargaining agreement or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations under Articles 15 and 15A of the NYS Executive Law.
- C. The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status.
- D. The Contractor shall include the provisions of paragraphs A, B, and C of this General Conditions Section 16.04 in every Subcontract and purchase order in such a manner that such provisions will be binding upon each Subcontractor and vendor as to the operations for the Contract to be performed within the State of New York.
- E. Pursuant to NYS Labor Law, Section 220-e, the Contractor specifically agrees:
  - 1. That in the hiring of employees for the performance of Work under the Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operations performed within the territorial limits of the State of New York, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status 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. That no Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under the Contract on account of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status.
  - 3. That there may be deducted from the amount payable to the Contractor, by the Owner under the Contract, a penalty of Fifty 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 the Contract.
  - 4. That the Contract may be canceled or terminated by the Owner and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section 16.04 E of the Contract.

#### **Section 16.05 - Domestic Steel**

The Dormitory Authority is required to comply with all provisions of Title 4 of Article 9 of the NYS Public Authorities Law, including NYS Public Authorities Law Section 2603-a, and in accordance therewith, if the amount of the Contract exceeds \$100,000, the Owner requires that all structural steel, reinforcing steel

or other major steel items to be incorporated in to the Work of the Contract be produced or made in whole or substantial part in the United States, its territories, or possessions. The Owner, in its discretion, may grant waivers of this requirement in accordance with NYS Public Authorities Law Section 2603-a. Contractor must request a waiver in writing and obtain a written waiver of this requirement from Owner before using in performance of the Contract any steel not produced or made in whole or substantial part in the United States, its territories, or possessions.

## **Section 16.06 - Failure to Comply with Article 16**

The Owner will not be responsible for any Claim arising from compliance with this General Conditions Article 16.

## **ARTICLE 17—RECORDS/AUDITS/INVESTIGATIONS/ETHICS**

### **Section 17.01 – Preparation of Records/Owner's Right to Inspect Records and to Audit**

The Contractor shall, concurrently with performance of the Contract, prepare substantiating records regarding performance of the Contract, including records of Subcontractors and material suppliers. General Conditions Section 17.03 describes the records and other data to be maintained by Contractor, Subcontractors, and material suppliers. The Contractor shall maintain and keep, for a period of at least six (6) years after the date of payment of the final Application for Payment, all records and other data relating to the Work, including records of Subcontractors and material suppliers. Upon seven (7) calendar days' written notice, the Contractor shall make its records (including records of Subcontractors and material suppliers) available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Contractor's records, including but not limited to all documents, electronic records and recordings, (including records of Subcontractors and material suppliers) at the Owner's reasonable expense, within adequate workspace at the Contractor's facilities. The Owner shall also have the right to have Owner or its authorized representative audit all records and other data of the Contractor, Subcontractors and material suppliers relating to the Work.

### **Section 17.02- False Statements/Information/Disclosure**

Failure to comply with General Conditions Section 17.01, providing False Representations, false statements or inaccurate information submitted in accordance with Contract Documents, including but not limited to, an Application for Payment, a Claim or a Change Order, a filing or system entry related to MWBE participation requirements or False Representations, false statements, or inaccurate information submitted to the Owner, or a determination that the Contractor participated in the kick-back of wages may result in one or more of the following actions:

- A. Termination of the Contract for cause, pursuant to General Conditions Section 11.01.
- B. Rejection of future bids or disapproval of a contract or subcontract.
- C. Withholding of payments.
- D. Criminal prosecution.
- E. Civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
- F. Rejection of a Claim or Change Order.
- G. Deduction of the Owner's cost of an audit from the Contract amount.

### **Section 17.03 - Owner's Right to Conduct Investigations**

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Owner.

- B. The Contractor shall grant the Owner 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 Contractor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the Contractor, relating to the Contract. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; daily reports of Work completed that day; schedules; reports; audits; vendor qualification records; original estimate files; Change Order/Contract Amendment estimate files; detailed worksheets; Subcontractor, consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns; and the supporting documentation for the aforesaid books and records.
- C. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Contractor shall execute such documents, if any, as are necessary to give the Owner access to Contract-related books, documents, or records, which are, in whole or part, under control of the Contractor but not currently in the Contractor's physical possession. The Contractor shall not enter in to any agreement with a Subcontractor, consultant, or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the Owner. The Contractor shall assist the Owner in obtaining access to past and present Subcontractor, consultant, and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.
- D. The Contractor shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Contractor, for purposes of the Contract.
- E. The Contractor shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter in to with any and all Subcontractors, consultants, and suppliers, in connection with the Contract, a right-to-audit clause in favor of the Owner conferring rights and powers of the type outlined in this General Conditions Section 17.03. The Contractor shall not enter in to any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Contractor shall not make any payments to a Subcontractor, consultant, or supplier from whom the Contractor has failed to obtain and supply to the Owner complete, accurate, and truthful information in compliance with a request from the Owner to the Contractor.
- F. Any violation of the provisions of this General Conditions Article 17 shall justify termination of this Contract and may result in the Owner's rejection of the Contractor's bids or proposals for future contracts and the deduction of the Owner's cost of an audit from the Contract amount.

#### **Section 17.04 - Disclosure of Criminal Investigation**

- A. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor, or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), are subpoenaed or questioned in connection with any business-related criminal investigation, whether or not the owner, partner, director, officer or employee is, or is believed to be, the subject or target of such investigation, or is notified or otherwise learns that any owner, partner, director, officer or employee of the Contractor or its affiliated companies is under investigation for an alleged business-related violation of criminal law, or in the event that any premises or records of the Contractor are searched pursuant to a search warrant seeking evidence of a crime or crimes, unless otherwise precluded by law enforcement authorities.
- B. The Contractor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Contractor or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), the firm itself, or one of its affiliated companies is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal law, unless otherwise precluded by law enforcement authorities.



- C. In the event that any owner, partner, director, officer, or employee of the Contractor is indicted or charged in an accusatory instrument for any business-related violation of local, state, or federal criminal law relating to this Contract or any other Dormitory Authority contract, the Owner may require the Contractor to remove said owner, partner, director, officer, or employee from any direct involvement in the affairs of the Contractor as it relates to this Contract and all other Dormitory Authority contracts until the criminal matter is resolved. In the event that any owner, partner, director, officer, or employee of the Contractor is convicted of a business-related violation of local, state, or federal criminal law, the Owner may require the Contractor to permanently remove said individual from any direct involvement in the affairs of this Contract and all other Dormitory Authority contracts.
- D. In the event that the Contractor or any owner, partner, director, officer, or employee of the Contractor is convicted or enters into an agreement as a remedy to the alleged commission of a criminal act of a business-related violation of local, state, or federal criminal law or regulatory violation, the Owner may schedule a hearing with the Contractor to determine the Contractor's responsibility to continue work under this Contract and other Dormitory Authority contracts. Following this hearing, the Owner may, at its sole discretion, take one or more of the following actions:
  - 1. Terminate this Contract.
  - 2. Require the Contractor, at its own expense, to hire an independent private-sector inspector general to monitor its activities, institute procedures and conduct internal inquiries, in a manner prescribed by the Owner.
  - 3. Increase retainage to an amount not to exceed ten percent (10%).
  - 4. Take any other remedial action deemed appropriate.

#### **Section 17.05 - Anti-Riot Provisions**

- A. The Contractor agrees that no part of the Contract funds shall be used to make payments, give assistance, or supply services, in any form, to any individual convicted in any federal, state, or local court of competent jurisdiction for inciting, promoting, or carrying on a riot, or engaging in any group activity resulting in material damage to property or injury to persons found to be in violation of federal, state or local laws designed to protect persons or property.
- B. The Contractor and each Subcontractor shall notify their employees of all rules and regulations adopted pursuant to Article 129-A of the NYS Education Law. The Contractor shall post notices containing the text of the aforementioned rules and regulations at the Site.

#### **Section 17.06 - Ethical Conduct**

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the NYS Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector, or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory, or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.
- B. Section 73(5) of the NYS Public Officers Law expressly prohibits the Contractor, 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 or was intended as a reward for the employee's official action.
  - 1. In addition to the prohibition of Section 73(5) of the NYS Public Officers Law, the Dormitory Authority has a "zero tolerance" policy with respect to the solicitation, acceptance, or receipt of gifts from disqualified sources. Therefore, the Contractor and its agents shall 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 Contractor 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 Contractor 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 representatives as required.
  3. Not seek, solicit, demand or accept any information, verbal or written, from the Owner or its representatives 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 representatives that constitutes a conflict of interest, in fact or in appearance.
  6. Not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the Contractor 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 Contractor may employ relatives of Owner employees, the Owner shall 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 Contractor 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 Contractor 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 (2) years following their separation from service with the Owner. In addition, former employees of the Owner are subject to a “lifetime bar” from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the Owner.
- G. The Contractor 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 General Conditions Section 17.06.
- H. Any violation of this General Conditions Section 17.06 shall justify termination of this Contract and may result in Owner’s rejection of the Contractor’s bids or proposals for future agreements.

#### **Section 17.07 – Continuing Integrity**

- A. The Contractor shall, at all times during the Contract term, remain responsive and responsible. The Contractor shall also monitor all Subcontractors for responsiveness and responsibility at all times during the Contract term. The Contractor 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. The Contractor shall immediately notify Owner of any material or adverse information pertaining to the Contractor or any Subcontractor, regardless of tier.

- B. 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 in to question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor shall 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.
- C. Notwithstanding any other provision of this Contract, upon written notice to Contractor, 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 Contractor's expense where Contractor 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 the breach.

#### **Section 17.08 – Iran Divestment**

- A. By entering in to this Contract, Contractor certifies, under the penalties of perjury, that Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law. Contractor further certifies that Contractor 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 NYS State Finance Law.
- B. During this Contract, should Owner receive information that a person (as defined in NYS 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 Contractor in default.

### **ARTICLE 18 -- 2005 PROCUREMENT LOBBYING LAW**

#### **Section 18.01 – Procurement Lobbying Law**

Bidders shall affirm their understanding of and agree to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with NYS State Finance Law § 139-k (5), disclose prior non-responsibility determinations under NYS State Finance Law § 139-j, and shall certify that the information they provide with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate. Contractor hereby reaffirms its understanding of an agreement to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), re-certifies its compliance with NYS State Finance Law § 139-k (5) and recertifies that the information it provided with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate.

#### **Section 18.02 – Contractor's Certifications**

For any contract \$15,000 or more each Contractor shall submit, with its bid, on the form provided herewith, the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k. The information contained in the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k will serve as an informational resource to aid the Owner in making an award determination.

#### **Section 18.03 – Termination Provisions**

The Owner reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with NYS 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 right pursuant to General Conditions Section 11.01 – Termination for Cause.

## **ARTICLE 19 -- EXECUTIVE ORDER No. 125**

### **Section 19.01 - Determination of Contractor Responsibility**

In order to assist the Owner in determining the responsibility and reliability of the lowest bidder for the Contract and to effectuate the directives of Executive Order No. 125, dated May 22, 1989, (9 NYCRR §4.125) the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among contracting agencies.

### **Section 19.02 – NYS Vendor Responsibility Questionnaire**

- A. For any Contract valued at \$10,000 or more, the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Contractor or for any Subcontractor shall be submitted as requested by the Owner. Owner may request an updated NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Contractor or for any Subcontractor as often as the Owner, in its sole and exclusive discretion, deems necessary to carry out the Owner's duties and responsibilities under this Contract.
- B. The information contained in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) will serve as an informational resource to aid the Owner in making an award determination and in making other determinations for this Contract.

## **ARTICLE 20 -- OPPORTUNITY PROGRAMS**

### **Section 20.01 - General Provisions**

- A. The Dormitory Authority is required to implement the provisions of NYS Executive Law Article 15-A and Parts 140 through 145 of Title 5 of the NYCRR for all State contracts (as defined in such statute and regulations) with a value:
  - 1. in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing; or
  - 2. in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS, and the regulations promulgated thereunder. These requirements include: equal employment opportunities for minority group members and women (EEO); and contracting opportunities for NYS certified minority and women-owned business enterprises (MWBES). The Contractor's demonstration of good faith efforts pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Executive Law Article 15 (the Human Rights Law) and other applicable federal, state and local laws.
- C. Failure to comply with all requirements in this General Conditions Article 20 may result in a finding of non-responsiveness, non-responsibility, breach of contract or any combination of the foregoing leading to the assessment of liquidated damages pursuant to General Conditions Section 20.06 and other remedies available to the Owner pursuant to the Contract and applicable law.

## **Section 20.02 – Equal Employment Opportunity (EEO)**

- A. The provisions of NYS Executive Law Article 15-A, and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. The Contractor shall:
  - 1. Undertake or continue, and ensure each Subcontractor shall undertake or continue, existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. Submit an EEO policy statement to the Owner within seventy-two (72) hours after the date of the Letter of Intent to award the Contract.
  - 3. Adopt a model EEO policy statement and require each Subcontractor to adopt a model EEO policy statement if the Contractor or Subcontractor does not have an existing EEO policy statement, and if the Owner requires the Contractor or Subcontractor to adopt a model EEO policy statement.
  - 4. Have a Contractor's EEO policy statement that shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
    - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - 5. The Contractor shall include the provisions of paragraphs a. through c. of this General Conditions Section 20.02 B. 4. and Subdivision E of this General Conditions Section 20.02, which provides for relevant provisions of the Human Rights Law, in every Subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.
- C. To ensure compliance with this General Conditions Section 20.02, the Contractor shall submit a staffing plan, on a form provided by Owner, to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it when directed by Owner.

D. To ensure continuous compliance with General Conditions Section 20.02:

1. The Contractor shall submit a Workforce Utilization Report and shall require each Subcontractor to submit a Workforce Utilization Report, in such form as shall be required by the Owner on a monthly basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and each Subcontractor.
3. Pursuant to Executive Order 162 (9 NYCRR 8.162) dated January 9, 2017, the Contractor and its Subcontractors are required to submit monthly *E.O. 162 Workforce Utilization Reports* for contracts with a total contract value of Twenty-Five Thousand 00/100 Dollars (\$25,000.00) or more. All *E.O. 162 Workforce Utilization Reports* are to be submitted within 10 days of the end of each month by following the online reporting process set forth in section 20.02 (4). The *E.O. 162 Workforce Utilization Reports* will require the Contractor and its and Subcontractors, among other things, report the gross wages paid to each of their employees for the work performed by such employees in connection with the Contract.
4. For monthly reporting in connection with Executive Order 162, reports are to be submitted electronically as follows:
  - a. Log-in (<https://ny.newnycontracts.com>) or visit the NYSCS Account Look Up (<https://ny.newnycontracts.com/frontend/usersearchpublic.asp>) and follow the on-screen directions to look up your firm's account and then access the secure System. Contact Customer Support via any of the System links if you have any questions while attempting to access your account.
  - b. Go to View>> My Workforce Audits.
  - c. View Workforce Audits by status, dates, contract, and contract type (Prime/Subcontractor).
  - d. The System will notify contractors to log in to review and record the workforce details for the applicable audit.
  - e. Complete all required reporting on a timely basis.
- E. The Contractor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and each Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.



### **Section 20.03 – Opportunities for Minority and Women-Owned Business Enterprises (MWBE)**

- A. The Owner has established goals for the participation in this Contract of NYS certified minority-owned business enterprises (“MBE”) and NYS certified women-owned business enterprises (“WBE” and collectively with MBEs, “MWBE”). The goals (collectively, MWBE Contract Goals) are set forth in the Information for Bidders Section 8.0 – Opportunity Programs Requirements.
- B. The Contractor represents and warrants that, as a condition for award of the Contract, the Contractor has submitted a Statewide Utilization Management Plan (“SUMP”) via the NYS Contract System (NYSCS) which lists all proposed Subcontractors including an identification of the NYS certified MWBE subcontractors and suppliers the Contractor intends to use to perform the Work of the Contract and to achieve the MWBE Contract Goals established in the Contract Documents. In addition, or alternatively, Contractor may have submitted a request for a waiver. Prior to award of the Contract, the Owner approved Contractor’s plan to achieve the MWBE Contract Goals established in the Contract Documents (MWBE Utilization Plan) to the extent the Owner did not approve Contractor’s request for a waiver of part or all of the MWBE Contract Goals. Owner approval of the Utilization Plan approves a Subcontractor only for the purpose of the Utilization Plan.
- C. Contractor agrees to adhere to the Utilization Plan in the performance of the Contract. Contractor shall not change the Utilization Plan without the prior written approval of the Owner. Contractor further agrees that failure to adhere to the Utilization Plan shall constitute a material breach of the Contract and upon such breach, the Owner shall be entitled to any remedy provided in the Contract or by law, including but not limited to a finding that the Contractor is non-responsible.
- D. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1 may be applied towards the achievement of the applicable MWBE Contract Goal. The portion of a subcontract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be sixty percent (60%) of the total value of the subcontract. The portion of a subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. The Owner will audit the Contractor’s efforts to achieve the MWBE Contract Goals through the NYSCS.

### **Section 20.04 - Good Faith Efforts**

- A. The Contractor shall document good faith efforts pursuant to 5 NYCRR § 142.5 to provide meaningful participation by MWBEs as Subcontractors (which includes material suppliers, other vendors, and others; see definition of Subcontractor in General Conditions Article 1 - Definitions) in the performance of the Contract, to comply with the requirements of the Contract and to enable the Owner to determine compliance with the provisions of this General Conditions Article 20. Guidelines for documentation of good faith efforts are at <https://www.dasny.org/forms> under MWSBE.
- B. If the Contractor fails to adequately document good faith efforts, it may result in a finding of non-compliance.

### **Section 20.05 - Waivers**

- A. If the Contractor, after making good faith efforts satisfactory to the Owner, is unable to achieve the MWBE Contract Goals, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Owner. The request for a waiver must be supported by evidence of the good faith efforts by the Contractor to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

If the Owner, upon review of the SUMP, the MWBE Utilization Plan, the NYSCS and any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Owner may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **Section 20.06 – Damages - MWBE Participation**

- A. If the Owner determines that the Contractor is not in compliance with the requirements of this General Conditions Article 20 and the Contractor refuses to comply with the requirements of this General Conditions Article 20, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals, then: (1) the Contractor shall be obligated to pay the Owner liquidated damages; or (2) the Contractor shall be obligated to pay the Owner other appropriate damages; or (3) the Owner shall receive one or more other appropriate remedies, unless the Owner elects to pursue its remedies under NYS Executive Law Section 316. If the Owner declines to pursue its remedies under NYS Executive Law Section 316, the Owner may elect to pursue one or more of liquidated damages, other appropriate damages, and one or more other appropriate remedies.
- B. If the Owner decides to assess liquidated damages, the Contractor shall be obligated to pay to the Owner liquidated damages in an amount equal to the difference between all sums identified for payment to MWBEs if the Contractor had achieved the MWBE Contract Goals and all sums actually paid to MWBEs for performance of Work under the Contract. If such liquidated damages have not been withheld by the Owner, the Contractor shall pay such liquidated damages to the Owner within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR §142.2, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process. The liquidated damages are intended to compensate the Owner only for the Owner's damage if the Owner determines that the Contractor is not in compliance with the requirements of General Conditions Sections 20.03, 20.04 and 20.05 and the Contractor refuses to comply with the requirements of General Conditions Sections 20.03, 20.04 and 20.05, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals. In addition, the Contractor shall be liable to the Owner to the fullest extent permitted by law for:
1. whatever other appropriate damages the Owner may incur; or
  2. any other appropriate remedy to which the Owner may be entitled as a result of the Contractor's refusal to comply with the requirements of this General Conditions Article 20 outside the requirements of General Conditions Sections 20.03, 20.04, 20.05 and the MWBE Contract Goals.

Other appropriate damages include, but are not limited to, the expenses for personnel, supplies and overhead incurred by the Owner to administer and enforce the requirements of this General Conditions Article 20 other than the requirements of General Conditions Sections 20.03, 20.04, 20.05 and the MWBE Contract Goals.

## **Section 20.07 – Reporting to Owner**

The Contractor shall complete the reports and submit as indicated to establish and update EEO requirements during the life of the Contract. Reports not submitted at such time shall be cause for the Owner to delay payment to the Contractor. The listed reports are a requirement of the Contract and copies are included in the Contract Documents and template forms are also available on the Dormitory Authority's web site. The Contractor shall submit to the Owner all executed agreements and purchase orders for ALL MWBE/SDVOB subcontractors/suppliers who were approved on the Utilization Plan no later than 30 days after award of the Contract.

## **ARTICLE 21- SERVICE-DISABLED VETERAN OWNED BUSINESSES**

### **Section 21.01 – General Provisions**

Article 17-B of the NYS Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran- Owned Businesses (SDVOB), thereby further integrating such businesses into New York State's economy. The Dormitory Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Dormitory Authority contracts.



## Section 21.02 – Contract with Goals

- A. If the Information for Bidders established an overall goal for SDVOB participation in this Contract and Contractor submitted a Utilization Plan that was accepted by the Dormitory Authority, Contractor shall follow the accepted Utilization Plan. Contractor, by award of the Contract, certified that Contractor shall follow the submitted and accepted Utilization Plan for the performance of SDVOBs on the Contract.
- B. Contractor shall not change the accepted Utilization Plan without the prior written consent of the Dormitory Authority. Any modifications or changes to the accepted Utilization Plan after award of the Contract to the Contractor shall be reported to the Dormitory Authority on a revised Utilization Plan. As part of a revised Utilization Plan, the Contractor may request a partial or total waiver of the goal for SDVOB participation, but such request must be made prior to submission of the Application for Payment for the final payment on the Contract. Contractor shall make and shall document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. The revised SDVOB Utilization Plan is not effective unless and until it is accepted by the Dormitory Authority. If the revised SDVOB Utilization Plan is not accepted by the Dormitory Authority, the Dormitory Authority shall issue a notice of deficiency and the Contractor shall proceed as set forth in paragraph D of this General Conditions Section 21.02
- C. Contractor shall report to the Dormitory Authority Monthly SDVOB Contractor Compliance during the Contract documenting the preceding month's progress towards implementing the accepted SDVOB Utilization Plan and achieving the SDVOB goals for the Contract. This information shall be submitted to the Dormitory Authority in the manner and at the times directed by the Dormitory Authority.
- D. If the Dormitory Authority, upon review of the SDVOB Utilization Plan and the Monthly SDVOB Contractor Compliance reports determines that the Contractor is failing or refusing to comply with the Contract SDVOB goals and no waiver has been issued with respect to such non-compliance, the Dormitory Authority may issue a notice of deficiency to the Contractor. The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the Contract SDVOB goals.
- E. Contractor shall make and shall document its good faith efforts to utilize SDVOBs in the performance of the Contract. Evidence of required good faith efforts includes but is not limited to:
  - 1. Copies of solicitations to SDVOBs and any responses thereto;
  - 2. Explanation of the specific reason(s) each SDVOB responding to a Contractor's solicitation was not selected;
  - 3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Dormitory Authority with certified SDVOBs which the Dormitory Authority determined were capable of fulfilling the SDVOB goals in the Contract;
  - 4. Information describing the specific steps undertaken to reasonably structure the scope of subcontracts and material orders for the purpose of subcontracting with, or obtaining materials from, SDVOBs;
  - 5. Other information relevant to the waiver request.
- F. Contractor's failure to use SDVOBs in accordance with the accepted Utilization Plan or any accepted revised Utilization Plan shall be a material breach of the Contract and upon such breach, the Dormitory Authority shall be entitled to any remedy provided in the Contract, by law or regulation or at law or in equity, including but not limited to a finding the Contractor is non-responsible. If the Dormitory Authority finds the Contractor willfully and intentionally fails to comply with the Contract SDVOB goals, the Contractor shall pay damages to the Dormitory Authority as set forth in 9 NYCRR § 252.2(s).

### **Section 21.03 – Contract with No Goals**

If the Information for Bidders does not establish an overall goal for SDVOB participation in this Contract, Contractors are still strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract in recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State. The Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs in performance of the Contract as Subcontractors.

GENERAL CONDITIONS

**Exhibit “A”**

RELEASE FORM  
REDUCTION OF RETAINAGE  
DORMITORY AUTHORITY STATE OF NEW YORK

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RELEASE FORM  
REDUCTION OF RETAINAGE  
DORMITORY AUTHORITY STATE OF NEW YORK

TO ALL TO WHOM THESE PRESENTS SHALL COME, OR MAY CONCERN, GREETING: Know ye,

that \_\_\_\_\_ hereinafter referred to as the

Contractor for and in consideration of the sum of \_\_\_\_\_

\_\_\_\_\_ dollars (\$ \_\_\_\_\_), lawful money of the

United States of America to it in hand heretofore or now paid by the Dormitory Authority, the receipt whereof

is hereby acknowledged, has remised, released, and forever discharged and by these presents does, for itself,

its successors and its assigns, remise, release, and forever discharge the said Dormitory Authority, its

members, officers, agents, employees, successors, and assigns of and from all claims of liability to the

Contractor for anything furnished or performed in connection with, or arising out of a contract dated the \_

\_\_\_\_\_ day of \_\_\_\_\_, between the Dormitory Authority and the Contractor in

relation to the construction of \_\_\_\_\_

or out of the work covered by said contract or arising out of said contract including, but not limited to, all

claims for extra work or by reason of extra work, labor or materials, or additional work or by reason of

additional work, labor, or materials furnished or performed in connection with, relating to, or arising out of

the subject matter of said contract, and any prior act, neglect, or default on the part of the Dormitory

Authority or any of its members, officers, agents, employees, successors, or assigns in connection therewith,

and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts,

reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances,

trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law or in equity,

which against the said Dormitory Authority, its members, officers, agents, employees, successors ,

RELEASE FORM  
REDUCTION OF RETAINAGE  
DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
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and assigns the Contractor ever had, now has, or which its successors or assigns hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, except the undersigned hereby specifically excludes from this release and hereby retains and reserves any and all right in connection with and concerning retention being held by the Dormitory Authority in the amount of \_\_\_\_\_

\_\_\_\_\_ dollars (\$\_\_\_\_\_), and a claim for damages in the amount of \_\_\_\_\_

\_\_\_\_\_ dollars (\$ \_\_\_\_\_),

presented to the Dormitory Authority. Failure to enter an amount for the claim for damages in the space provided above shall be deemed to mean zero or no damages.

The Contractor further acknowledges that neither the aforesaid payment nor acceptance by the Dormitory Authority of the work covered by the aforementioned contract shall in any way or manner operate as or constitute a release or waiver to its obligations, undertakings, or liabilities, under said contract or in any way affect or limit the same. This release may not be changed orally.

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IN WITNESS WHEREOF, the said Contractor has caused these presents to be signed by its duly authorized officer on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NAME OF CONTRACTOR

BY: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_\_  
before me personally came \_\_\_\_\_ to me know, who, being by me  
duly sworn, did depose and say that he resides at \_\_\_\_\_;  
that he is the \_\_\_\_\_ of the \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which executed  
the above instruments; and that he signed his name thereto by order of the board of directors of said  
corporation.

\_\_\_\_\_  
NOTARY PUBLIC

## CORPORATE ACKNOWLEDGMENT

Page 3.1

State of New York                    )  
  ) ss.:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that (he/she/they) reside(s) in \_\_\_\_\_; that (he/she/they) (is /are) the president /other officer/director/attorney in fact duly appointed) of the \_\_\_\_\_

\_\_\_\_\_  
(name of corporation)  
the corporation described in and which executed the above instrument; and that (he/she/they) signed (his/her/their) name(s) thereto by authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public Signature  
My Commission Expires \_\_\_\_\_

*Cross out words that do not apply in parentheses.*

## UNIFORM ACKNOWLEDGMENT

(For Use by All Persons and Entities Other Than Corporations)

State of New York                    )  
  ) ss.:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, 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.

CONSENT OF SURETY  
REDUCTION OF RETAINAGE  
DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
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Contract Between the Dormitory Authority and \_\_\_\_\_

\_\_\_\_\_  
(hereinafter referred to as Contractor)

For \_\_\_\_\_ (Project)

Dated \_\_\_\_\_

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In accordance with the provisions of the Contract, indicated above, between the Owner and the Contractor,  
the (here insert the name and address of Surety Company)

(hereinafter referred to as Surety Company),

As Surety on the Performance and Labor & Material Payment Bonds of the Contractor and the Surety Company, issued as part of the said Contract, hereby approves of reduction of retainage on the Contract, and agrees that any such payment to the Contractor shall not relieve the Surety Company of any of its obligations to the Dormitory Authority, as set forth in the said bonds.

IN WITNESS WHEREOF,

the Surety Company has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title



**SURETY ACKNOWLEDGMENT**

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State of \_\_\_\_\_)  
County of \_\_\_\_\_) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally  
came \_\_\_\_\_ to me known, who, being by me  
duly sworn, did depose and say that (s)he resides in \_\_\_\_\_;  
that (s)he is the Attorney of the \_\_\_\_\_, the corporation  
described in and which executed the attached instrument; that (s)he knows the seal of the said corporation;  
that the seal affixed to said instrument is such corporate seal; and that is was so affixed by order of the  
Board of Directors of the said corporation, and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_