

CONTRACT

A Contract, dated as of _____ 2026, by and between the **Dormitory Authority of the State of New York** (“**DASNY**” or the “**OWNER**”), a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 of the Public Authorities Law of the State of New York, as amended and having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964 (the “**DASNY**”), and [], whose office is located at _____, (the “**CONSULTANT**”).

WHEREAS, the **OWNER** has requested the **CONSULTANT** to provide Commercial General and Excess Liability Broker Services, hereinafter referred to as the Project; and

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

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

ARTICLE I: CONSULTANT'S SERVICES

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

For purposes of this Contract, “Services” shall mean the Original Services, Additional Services and/or Extra Work performed pursuant to this Contract, as the case may be.

ARTICLE II: ADDITIONAL SERVICES

The **OWNER** reserves the right to direct the **CONSULTANT** to provide Additional Services and the **CONSULTANT** shall provide said Additional Services when so directed. Payment for said Additional Services shall be in accordance with Article V.B.

ARTICLE III: EXTRA WORK

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

ARTICLE IV: CONSULTANTS

- A. The OWNER may retain a subconsultant(s) to furnish services throughout the term of this Contract, and the CONSULTANT shall cooperate with said subconsultant(s).
- B. The CONSULTANT may propose and engage subconsultants, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed subconsultant and, in such event, the CONSULTANT shall propose another subconsultant for that portion of the required Services. The CONSULTANT shall be responsible to the OWNER for the timely and efficient completion of all Services performed by said subconsultant. The fees of any subconsultants retained by the CONSULTANT for services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1. The fees of any subconsultants retained by the CONSULTANT for services required under Article III shall be paid as outlined in Article V.B.
- C. The CONSULTANT shall pay its subconsultants the full amount due them from their proportionate share of each requisition for payment submitted by the CONSULTANT and paid by the OWNER. The CONSULTANT shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.
- D. Payment to the CONSULTANT shall only be rendered electronically, unless payment by paper check is authorized in writing by the OWNER. The CONSULTANT further acknowledges and agrees that the OWNER may withhold payments, if the CONSULTANT 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.

ARTICLE V: PROVISION FOR PAYMENT

MAXIMUM AMOUNT PAYABLE

The OWNER shall pay, and the CONSULTANT agrees to accept, as full compensation for all Services pursuant to this Contract, the _____ amount of _____ and 00/100 Dollars (\$___). Appendix "B", entitled **SUMMARY OF PAYMENTS**, is attached to and made a part hereof.

The CONSULTANT is required to submit payment requests to the OWNER, on behalf of subconsultants, within 30 days of receiving approvable subconsultant invoices.

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

A. CONSULTANT'S SERVICES

1. Original Scope of Services

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

Compensation shall be paid in accordance with the following schedule:

(Insert deliverable line and amounts)

B. ADDITIONAL SERVICES AND EXTRA WORK

Payment for Additional Services and Extra Work will be negotiated in good faith by the CONSULTANT and the OWNER as a lump sum or on an actual expense basis pursuant to a written amendment to this Contract.

ARTICLE VI: REIMBURSABLE EXPENSES

N/A

ARTICLE VII: WITHHOLDING OF PAYMENTS

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

1. to assure payment of just claims of any Subconsultants;
2. to protect the OWNER from the CONSULTANT's failure to perform services; and
3. to protect the OWNER or other such entities as identified by the OWNER as Additional Insureds from loss due to failure to defend, loss due to injury to persons or damage to property of others caused by the act or neglect of the CONSULTANT or subconsultant.

ARTICLE VIII: FINAL PAYMENT AND RELEASE

Final payment shall be made to the CONSULTANT upon satisfactory completion and acceptance by the OWNER of all services required, by the CONSULTANT pursuant to this Contract, or all services performed prior to the termination of said Contract if so terminated and upon submission of a certification that all subconsultants have been paid their full and agreed compensation.

Acceptance by the CONSULTANT of final payment hereunder shall operate as, and shall be, a release to the OWNER from all claims and liability to the CONSULTANT and its successors, legal representatives, and assigns for anything done or furnished under or arising out of the provisions of this Contract. No payment, final or otherwise, shall release the CONSULTANT from any obligations under this Contract.

ARTICLE IX: OWNER'S PROCEDURE

The CONSULTANT agrees to comply with all procedural requirements of the OWNER reasonably inferable from the scope of services, as set forth in the attached Appendix "A", entitled, "**SCOPE OF SERVICES OF CONSULTANT**".

ARTICLE X: INSURANCE

A. General Provisions

- (i). The CONSULTANT and Subconsultants shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and of the insurance companies issuing such policies.
- (ii). All insurance required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company or meet such other requirements as are acceptable to the OWNER in its sole and exclusive discretion.
- (iii). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to the OWNER except for non-payment in which case notice to the OWNER shall be provided as required by law.
- (iv). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the OWNER.
- (v). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall be written on an occurrence basis except where this Contract for CONSULTANT Services explicitly allows otherwise.
- (vi). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that the OWNER and the Client(s) as listed in Appendix "C" entitled "Additional Insureds" shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the CONSULTANT or Subconsultant shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. At any time this Contract for CONSULTANT Services requires the CONSULTANT or any Subconsultant to maintain an insurance policy, the OWNER may require the CONSULTANT or any Subconsultant to provide proof, acceptable to the OWNER in its sole discretion, that the CONSULTANT or Subconsultant has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the

CONSULTANT or Subconsultant may be liable under the claims pending or reasonably possible against the CONSULTANT or Subconsultant at the time the OWNER requires the proof. A failure of the CONSULTANT or Subconsultant to provide such proof is a failure of the CONSULTANT or Subconsultant to maintain the insurance required by the Contract or to provide the OWNER with evidence of valid and in-force insurance coverage required by the Contract.

- (vii). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract shall include a provision or endorsement that there shall be no right of subrogation against the OWNER or Client(s). If any of the CONSULTANT's policies or any of the policies of any Subconsultant prohibit such a waiver of subrogation, the CONSULTANT or Subconsultant shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the OWNER.
- (viii). Each liability and protective liability insurance policy required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that the coverage afforded the OWNER and Client(s) 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 or by the Client(s). Any other insurance policy maintained by the OWNER or by the Client(s) shall be in excess of and shall not contribute with the CONSULTANT's or Subconsultant's insurance policy, regardless of the "other insurance" clause contained in the OWNER's or Client(s)'s own policy of insurance or the CONSULTANT's or Subconsultant's insurance policies.
- (ix). Any CONSULTANT Contract Documents, including but not limited to the Request for Proposal may require any of the CONSULTANT and Subconsultants to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the OWNER or Client(s).
- (x). Notwithstanding any other provision of the Contract for CONSULTANT Services, the OWNER may require the CONSULTANT and any or all Subconsultants to provide, at the expense of the OWNER, any other form or limit of insurance in addition to the insurance requirements of the original Contract for CONSULTANT Services necessary to secure the interests of the OWNER or Client(s).
- (xi). Neither the procurement nor the maintenance of any type of insurance by the OWNER, the Client(s), or the CONSULTANT shall in any way be construed or deemed to limit, discharge, waive or release the CONSULTANT or any Subconsultant from any of the obligations or risks accepted by the CONSULTANT and Subconsultants or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the OWNER or the Client(s).
- (xii). All provisions of Article X: Insurance are to the fullest extent permitted by law. One purpose of this Contract for CONSULTANT Services is to allocate, to the fullest extent permitted by law, all risk of loss to the CONSULTANT, each Subconsultant, and the insurers of each. Each insurance company from which OWNER or Client(s) has directly purchased an insurance

policy is a third-party beneficiary of the CONSULTANT's and each Subconsultant's obligations to procure insurance.

- (xiii). CONSULTANT is responsible for ensuring that each Subconsultant obtains and maintains in the required amount each type of insurance policy required by this Contract for CONSULTANT Services and that such insurance policy provides the OWNER and Client(s) with the coverage required by this Contract for CONSULTANT Services.
- (xiv). CONSULTANT agrees and acknowledges that, because the CONSULTANT (and not the OWNER or Client[s]) is responsible for performance of the duties and obligations set forth in this Contract for CONSULTANT Services for completion of the Project, the CONSULTANT, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the OWNER and Client(s).

B. Submission of Insurance

- (i). OWNER will not execute the Contract unless the CONSULTANT shall submit to the OWNER or the OWNER's designee proof of insurance in such forms as requested and deemed acceptable by the OWNER, indicating the Contract, and showing evidence of all insurance required under the Contract. Upon the OWNER's request, the CONSULTANT 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. Certificates of insurance, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER, constitute a warranty by the CONSULTANT and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- (ii). The CONSULTANT shall submit to the OWNER or OWNER's designee insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and such other documents requested by the OWNER as proof of insurance for the CONSULTANT. All insurance submittals must be approved by the OWNER or the OWNER's designee prior to the CONSULTANT's commencement of work.
- (iii). Upon the OWNER's request, the CONSULTANT shall submit to the OWNER or OWNER's designee proof of insurance for one or more Subconsultants, in such forms as requested and deemed acceptable by the OWNER, indicating the Contract, and showing evidence of all insurance required under the Contract. Upon the OWNER's request, the CONSULTANT shall provide a copy of each insurance policy of the Subconsultant or Subconsultants 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 Subconsultants. Certificates of insurance of the Subconsultants, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER by the CONSULTANT, constitute a warranty by the CONSULTANT, the Subconsultant and the Subconsultant's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

- (iv.) Upon request of the OWNER, the CONSULTANT shall submit insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and such other documents requested by the OWNER as proof of insurance for a Subconsultant. OWNER may request proof of insurance for one or more Subconsultants at the same or at different times and may request proof of insurance for a particular Subconsultant as often as OWNER, in its sole and exclusive discretion, determines is necessary.

C. Insurance Provided by the CONSULTANT

- (i.) Prior to award of this Contract, the CONSULTANT 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 Subconsultant shall procure, at its sole cost and expense, prior to the CONSULTANT submitting to the OWNER the name of such Subconsultant and prior to such Subconsultant commencing performance of any of the work, and each Subconsultant shall maintain in force at all times required by this Contract all of the insurance required under this Contract. The insurance that the CONSULTANT and each Subconsultant shall procure and maintain under this Contract includes, but is not limited to, the following:

- (a.) Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (**Accord certificates are not acceptable**):

1. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
2. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
3. GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Professional's Group Self Insurance Administrator shall provide a completed form.
4. SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Professional's Self Insurance Administrator shall provide a completed form.

- (b.) Disability Benefits insurance. Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:

1. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
2. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS

Workers' Compensation Board's Self Insurance Office shall provide a completed form.

3. CE 200 Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at <http://www.wcb.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contract.
- (c). Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the CONSULTANT or Subconsultant for bodily injury, property damage, and personal/advertising injury arising from performance of the work. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least \$2,000,000; the general aggregate limit shall be at least \$4,000,000; the personal and advertising injury limit shall be at least \$1,000,000; the Fire Damage Legal Liability shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$4,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
1. If the CONSULTANT or Subconsultant proposes the use of a policy other than the ISO form CG 00 01 12 07, the CONSULTANT or Subconsultant shall provide the proposed policy to the OWNER which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The CONSULTANT or Subconsultant shall pay OWNER any attorney fees and other costs incurred by OWNER in determining whether the proposed policy provides equivalent coverage. OWNER will select the attorney providing advice on the proposed policy.
 2. ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority of the State of New York, the Client(s) as listed in Appendix "C" – Additional Insureds, and any other entities as required by the CONSULTANT Contract Documents, and for form CG 20 37 04 13 or its equivalent, specifically listing the Contract. In the event said endorsements or equivalents are not able to be provided, the OWNER may accept, at the OWNER's sole discretion, CG 20 38 04 13 or its equivalent or other manuscript endorsements providing equivalent coverage.
 3. If the CONSULTANT or Subconsultant proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, the CONSULTANT or Subconsultant shall provide the proposed endorsement(s) to the OWNER or the OWNER's designee which, in its sole and exclusive discretion, will determine whether the proposed endorsements provide equivalent coverage. CONSULTANT and Subconsultant shall pay OWNER any attorney fees and other costs incurred by OWNER in determining whether the proposed endorsements provide equivalent coverage. OWNER will select the attorney providing advice on the

proposed endorsements.

4. Additional insured status for OWNER, Client(s), and any other entities as required by the Contract shall apply during the course of performance of the work of the Contract.
 5. The policy provisions required by this Contract.
 6. Independent CONSULTANT s/subconsultants.
 7. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in this Contract, and covering tort liability of another assumed in a contract.
 8. Premises liability.
 9. Defense and/or indemnification obligations, including obligations assumed under this Contract.
 10. Cross liability for additional insureds.
 11. The maximum deductible or self-insured retention shall be \$100,000.
 12. No endorsement or provision in the policy shall exclude coverage for OWNER or Client(s) for any liability when the injured party is an employee of CONSULTANT or any Subconsultant.
 13. No endorsement or provision in the policy shall require privity of contract between the OWNER and Subconsultant or between the Client(s) and the CONSULTANT or Subconsultant in order for the OWNER, the Client(s) to have coverage as an insured on such insurance policy.
 14. OWNER and Client(s) shall be covered for any and all liability arising out of acts or omissions of CONSULTANT and any Subconsultant.
- (d). Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with this 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.
- (e). Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding sections, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding sections. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding sections. The Umbrella and/or Excess Liability

policies shall be primary to any other insurance maintained by the OWNER or Client(s) or any other additional insured. Any other insurance maintained by the OWNER, the Client(s), or any other additional insured shall be in excess of and shall not contribute with the CONSULTANT's or Subconsultant's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the OWNER's or Client(s)'s or other additional insured's own policy of insurance or the CONSULTANT's or Subconsultant's insurance policies.

- (f). Professional Liability insurance: Each of the CONSULTANT and any Subconsultant performing any work in connection with this Contract shall procure and maintain Professional Liability Insurance or Errors and Omissions Liability Insurance, as applicable, for the work with a minimum insurance limit of not less than \$2,000,000 issued to and covering damage for liability imposed on the CONSULTANT or Subconsultant by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render 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 required services are complete per written notification to the OWNER. The policy, at the sole expense of the CONSULTANT or Subconsultant, shall have extended Discovery Clause coverage of at least three (3) years after required services are complete per written notification to the OWNER if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.
- (ii). Notwithstanding any other provision of this Contract to the contrary and to the fullest extent permitted by law, CONSULTANT shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the OWNER or the Client(s) in any action brought by or against the OWNER or Client(s) concerning insurance coverage owed to OWNER or Client(s) by any insurer for which CONSULTANT or any Subconsultant represented that the OWNER or Client(s) would be an insured or would benefit in any way if a claim was brought against OWNER and Client(s).

D. Other Insurance Provided by CONSULTANT

In addition to the insurance required above, as applicable and at the sole discretion of the OWNER, the CONSULTANT shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract, the following other insurance:

- (i). Data Breach and Privacy Liability Insurance (Cyber Insurance)

CONSULTANT is required to maintain during the term of the contract, Data Breach and Privacy Liability Insurance (Cyber Insurance) with limits of not less than Two-Million Dollars (\$2,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, including coverage for the failure to protect confidential information and failure of the security of the CONSULTANT's computer systems or the OWNER's systems due to the actions of the CONSULTANT which results in unauthorized access

to the OWNER or its data. Said Insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable information (PII) (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

Coverage shall be provided for any incremental costs incurred by DASNY or its Clients to investigate and remediate any data breach that may have exposed DASNY's or its Client's data and the policy shall include third party coverage for DASNY and its Clients.

Such policy/policies shall name the Dormitory Authority of the State of New York and its Clients as Additional Insureds with respect to claims brought by third parties in connection with work performed by the Broker. Such policy/policies shall also remove any exclusion that restricts or eliminates coverage for claims brought by DASNY or its Clients against the Broker that would otherwise be covered by the policy.

If the policy is written on a Claims-Made basis, the CONSULTANT must submit to the OWNER an Endorsement providing proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.

E. Stop Work Order – Insurance

- (i). All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The CONSULTANT shall be responsible to submit updated insurance certificates to the OWNER or the OWNER's designee thirty (30) calendar days prior to any insurance certificate expiration date.
- (ii). Failure of the CONSULTANT or any Subconsultant to maintain the insurance required by this Contract or to provide the OWNER or the OWNER's designee with evidence of valid and in-force insurance coverage required by this Contract shall result in a Stop Work Order pursuant to Appendix 'E' – Termination or Suspension and/or withholding of payment to the CONSULTANT.
- (iii). At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CONSULTANT or Subconsultant shall immediately cease work. The CONSULTANT or Subconsultant shall not resume work until authorized to do so by the OWNER or the OWNER's designee.
- (iv). Any delay or time lost as a result of the CONSULTANT or Subconsultant not having proper

insurance required by this Contract or not providing the OWNER or the OWNER's designee with evidence of valid and in force insurance required by the Contract shall not give rise to a Claim against the OWNER.

F. Subcontractor Insurance Requirements

Reserved

ARTICLE XI: INDEMNIFICATION

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

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates responsibility to the OWNER, the OWNER's members, officers, employees, or representatives, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which the OWNER is responsible, and the OWNER agrees to pay the CONSULTANT the percentage of defense costs which the CONSULTANT incurred based upon an apportionment of the OWNER's allocated responsibility.

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

The CONSULTANT shall maintain, and shall keep for a period of six years after the date of Final Acceptance, all records and other data relating to this Contract, including records of consultants and subconsultants. The OWNER or the OWNER's Representative shall have the right to inspect and audit all records and other data of the CONSULTANT and its consultants and subconsultants relating to this Contract.

ARTICLE XIII: CONTINUING INTEGRITY

The CONSULTANT shall at all times during the Contract Term remain responsive and responsible. The CONSULTANT shall also monitor each Subconsultant for responsiveness and responsibility at all times during the Contract Term. The CONSULTANT agrees, if requested by the President of DASNY 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 CONSULTANT shall immediately notify DASNY of any material or adverse information pertaining to the CONSULTANT or any Subconsultant, regardless of tier.

The President of DASNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. Insurance Services may resume at such time as the President of DASNY or his or her designee issues a written notice authorizing a resumption of performance under this Contract.

Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate DASNY officials or staff, the Contract may be terminated by the President of DASNY or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of DASNY or his or her designee to be non- responsible. In such event, the President of DASNY 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.

In selecting a Subconsultant, the CONSULTANT shall consider whether the proposed Subconsultant 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 Subconsultant, the CONSULTANT shall also consider whether the proposed Subconsultant has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Insurance Services under this Contract.

ARTICLE XIV – CONFIDENTIALITY

For the purpose of this Contract, "Confidential Information" means any non-public information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party") in any form or medium (whether oral, written, electronic or other) that is identified as confidential at the time of disclosure or disclosed under circumstances that would reasonably indicate the need for confidential treatment. Confidential Information shall include, but is not limited to, technological information such as know-how, software, data, programs, inventions, ideas, processes, formulas, developments, designs, materials, business information such as marketing and selling, budgets, prices and costs, information about the Disclosing Party's employees, affiliates, suppliers and customers, and trade secrets. Confidential Information does not include information that is: (i) public knowledge at the time of disclosure or thereafter becomes generally known other than through an act of breach or negligence by the Receiving Party; (ii) already known by the Receiving Party prior to its receipt from the Disclosing Party; (iii) independently developed at any time by the Receiving Party without use of or reference to Confidential Information; (iv) rightfully obtained by the Receiving Party from other unrestricted sources.

ARTICLE XV – PROTECTION OF CONFIDENTIAL INFORMATION

- A. As a condition of being provided with any disclosure of or access to Disclosing Party's Confidential Information, the Receiving Party shall:
- (i). not access or use such Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Contract;
 - (ii). not disclose or permit access to such Confidential Information other than to its Representatives who:
 - (1) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Contract;
 - (2) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations hereunder; and

- (3) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section, including the following:
 - (a). safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and
 - (b). ensure its personnel's compliance with and be responsible and liable for any of its representatives' non-compliance with this Section.
 - (c). If the Receiving Party is compelled by law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.
- B. The provisions of the Section shall survive the natural expiration or termination of this Contract.

ARTICLE XVI --- COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS

- A. The CONSULTANT and Subconsultant shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and shall also comply with General Business Law § 899- bb.

If the CONSULTANT or Subconsultant learns of any actual or attempted unauthorized access to Information that would require notification under applicable Law relating to a data breach, the CONSULTANT will (1) promptly notify DASNY of all details known to the CONSULTANT and regularly supplement the same with new information as it is discovered; (2) bear responsibility for the costs of providing notice and identity protection services, and (3) at its cost, assist DASNY in its obligation under applicable Law.

ARTICLE XVII: TIME OF COMPLETION

The term of this Contract shall be from _____ through _____. The CONSULTANT shall continue to render services, within the term of this Contract and any extension(s), until the completion of said work unless the OWNER provides written notice otherwise.

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

ARTICLE XIV: ASSIGNMENT

The CONSULTANT shall not assign the Contract in whole or in part without prior written consent of the OWNER, however, the OWNER may assign the Contract in whole or in part without prior written consent of the CONSULTANT.

ARTICLE XV: APPENDIX "E" ADDITIONAL ITEMS

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

ARTICLE XVI – M/WBE & SDVOB CONTRACT GOALS

N/A

ARTICLE XVII: COUNTERPARTS

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

SAMPLE CONTRACT

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

Dormitory Authority of the State of New York
515 Broadway
Albany, NY 12207-2964

By _____

Title: Authorized Officer

Date: _____

Firm Name
Firm Address
Firm Address

By _____

Authorized Officer/Signatory

Title _____

Date: _____

SAMPLE CONTRACT

NEW YORK STATE ACKNOWLEDGEMENT – DASNY

State of New York)

) SS:

County of _____)

On the _____ day of _____, in the year ____, before me, the undersigned, personally appeared:

(NAME)

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

Signature of Notary

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

NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant

State of New York)

) SS:

County of _____)

On the _day of _____, in the year _____, before me, the undersigned, personally appeared:

(NAME)

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

Signature of Notary

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

APPENDIX "A"

SCOPE OF SERVICES

Broker Services

1. Program Placement, which shall include taking the program to market and securing placement with carriers of appropriate size and financial strength on policy forms with terms and conditions that are equal to or broader than the terms and conditions of the expiring policies. The selected BROKER shall be authorized to represent and assist DASNY and its Clients in all discussions and transactions with insurers, provided that the BROKER shall not place any insurance on behalf of DASNY and/or its Clients unless authorized to do so in writing by DASNY.
2. Throughout the contract term continue to develop a strong understanding of the various operations and relationships between DASNY and its Clients to ensure that the program provides appropriate insurance coverage for the named and additional insureds, as their interests may appear.
3. Identify issues and exposures, potential gaps in coverage and potential program improvements. Bring to the attention of DASNY as appropriate.
4. Negotiate with insurers on behalf of DASNY and its Clients and keep DASNY informed of significant developments resulting from those negotiations.
5. Provide coverage summaries for all newly placed or renewed policies, along with updates explaining any changes to existing coverage.
6. Review policies and endorsements for accuracy and conformity to specifications and negotiated coverages.
7. Keep DASNY informed with written reports of significant changes and/or trends in the insurance marketplace and provide DASNY with an annual forecast of market conditions.
8. Monitor published financial information for news regarding DASNY's current insurers and alert DASNY when the status of one or more of those insurers falls below minimum financial guidelines.
9. Approximately six months after policy inception, provide a customer service status report summarizing the services provided to date, plans for additional service going forward and any recommendations for the overall liability insurance program.
10. Approximately 120 days prior to policy expiration, present a recommended plan for program renewal/marketing, including timelines and assignments. Pending DASNY's approval of such plan and on a schedule to be determined by DASNY, present the same in presentation to the Clients, as requested.
11. In the event of any questions regarding the interpretation of the insurance policy placed by the BROKER, at DASNY's request the BROKER will represent DASNY and its Clients in any discussions with the insurance carrier.
12. Meet as necessary with DASNY's key staff designated by DASNY's Director, Insurance to discuss strategy and open items.

Claims Services

1. The Broker will assign a dedicated claim representative who will act in the capacity of consultant to DASNY and as liaison between DASNY, its Clients and the insurance carrier.
2. The BROKER will consult with DASNY regarding claim reporting and handling procedures and will offer recommendations to improve those procedures as necessary based on state/federal law and industry best practices.
3. The BROKER will complete an audit of DASNY's claim files, as requested by DASNY. The purpose of the audit will be to identify program improvements, identify process gaps or inefficiencies and to otherwise measure claim file content and associated processes against industry best practices in order to recommend changes that will best suit DASNY's needs.
4. The BROKER shall notify insurance carriers of potential or existing claims against the policy(ies) per procedures established in consultation with DASNY. The BROKER will monitor those claims until closing and will advise DASNY as necessary regarding appropriate handling practices.
5. The BROKER will secure carrier loss runs and participate in claim review/status meetings as requested by DASNY.

Administrative Services

1. Process or facilitate the processing of certificates of insurance, as requested by DASNY.
2. Following placement, deliver binders prior to the expiration of the current policies and as requested.
3. Follow up with insurance carriers for timely issuance of policies and endorsements.
4. Provide DASNY with detailed, accurate invoices, including explanations of rating adjustments, dividends and other factors affecting the calculation of premiums, fees/commissions and other policy expenses.

Loss Control/Risk Engineering Services

1. Possess the knowledge and have the capability to conduct inspections/surveys of selected locations, including construction project sites, to recommend operational and equipment changes that will improve the insurability of operations.
2. At DASNY's request, provide a written loss prevention plan that identifies recommended services.

APPENDIX "B"

SUMMARY OF PAYMENTS

MAXIMUM AMOUNT PAYABLE

\$

A. CONSULTANT'S SERVICES

\$

SAMPLE CONTRACT

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

APPENDIX "C"

ADDITIONAL INSUREDS (if applicable)

Dormitory Authority State of New York

State University of New York

State of New York

City University of New York

City University Construction Fund

New York State Department of Health

Helen Hayes Hospital

New York State Veterans' Homes at:

Oxford

St. Albans

Batavia

Montrose

David Axelrod Institute

Dormitory Authority of the State of New York Corporate Headquarters Condominium

495 Broadway Associates, LLC

NGHP Holding Corporation

Atlantic Avenue Healthcare Property Holding Corporation

Social Equity Servicing Corporation

APPENDIX "D"

ADDITIONAL ITEMS

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1. LABOR LAW PROVISIONS

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

paid said worker for the total number of hours worked and that the OWNER may disburse said amount so withheld by the OWNER for and on account of the CONSULTANT to the employees to whom said amount is due. The CONSULTANT further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the OWNER pursuant to other provisions of this Contract.

F. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law this Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- 1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or
- 2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

G. The CONSULTANT specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:

- 1) in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no CONSULTANT, nor any person acting on behalf of said CONSULTANT or subconsultant, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- 2) no CONSULTANT, nor any person on behalf of said CONSULTANT or subconsultant shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;
- 3) there may be deducted from the amount payable to the CONSULTANT, by the OWNER under this Contract, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Contract; and
- 4) this Contract may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.

H. The CONSULTANT specifically agrees to certify its payrolls and keep these certified records on site and available, and provide copies to the OWNER upon request.

2. **NONDISCRIMINATION**

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

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

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

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

3. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

4. **COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

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

5. **CONTRACT DEEMED EXECUTORY**

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

6. **OWNERSHIP OF DOCUMENTS**

N/A.

7. **TERMINATION OR SUSPENSION**

A. Termination for Cause

If the CONSULTANT defaults by failing to substantially perform, in accordance with the terms of this Contract, as determined by the OWNER, the OWNER may give written notice to the CONSULTANT (i) terminating this Contract effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the CONSULTANT initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the CONSULTANT fails to initiate cure upon the request of the OWNER and continue such cure until complete, the OWNER may give notice to the CONSULTANT of immediate termination. If the OWNER terminates this Contract pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the CONSULTANT was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph B of this Article.

B. Termination for Convenience or Suspension of Project

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

C. Payment In Case Of Termination or Suspension of Project

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

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

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

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

8. SUSPENSION OR ALTERATION

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

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

N/A.

11. GOVERNMENT PROVISIONS

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

12. COOPERATION

N/A.

13. LATE PAYMENT

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

14. DEATH OF THE CONSULTANT

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

15. OWNER-CONSULTANT RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

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

17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE

- A. In order to assist the OWNER in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.
- B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the CONSULTANT shall, within ten days following either oral or written notice that it must comply, submit evidence of a duly executed NYS Vendor Responsibility Questionnaire (VRQ) to the OWNER.

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

- C. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the OWNER in making an award determination.
- D. The CONSULTANT shall at all times during the Contract term remain responsive and responsible. The CONSULTANT shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term. The CONSULTANT agrees, if requested by the President of the OWNER or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The CONSULTANT shall immediately notify OWNER of any material or adverse information pertaining to the CONSULTANT or any Subconsultant, regardless of tier.
- E. The President of the OWNER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of the OWNER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- F. Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, the Contract may be terminated by the President of the OWNER or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of the OWNER or his or her designee to be non-responsible. In such event, the President of the OWNER or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.
- G. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall consider whether the proposed Subconsultant or Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The CONSULTANT 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 CONSULTANT 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 CONSULTANT shall not subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

- H. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall also consider whether the proposed Subconsultant or Subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Work on the Project.
- I. Prior to award of a Contract, the CONSULTANT shall require any Subconsultant or Subcontractor, with a subcontract value of two million dollars (\$2,000,000) or greater, to submit to the OWNER a certified NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for review. At any time during the term of the Contract, the OWNER may request, and the CONSULTANT, Subconsultant or Subcontractor shall provide, a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for any Subcontractor performing Work on the Project for review. Additionally, the OWNER or CONSULTANT may require a Subconsultant or Subcontractor to update, recertify and resubmit a previously submitted NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) to the OWNER upon request. Refer to General Conditions Article 19 – Executive Order No. 125.

18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS

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

In addition to the prohibition of Section 73 (5) of the Public Officers Law, DASNY has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the CONSULTANT and its agents should refrain from offering or giving anything of value to an employee of the OWNER. Employees of the OWNER may not solicit any gift, gratuity, stipend or thing of value from the

CONSULTANT or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.

- C. To promote a working relationship with the OWNER based on ethical business practices, the CONSULTANT is expected to:
- 1) furnish all goods, materials and services to the OWNER as contractually required and specified,
 - 2) submit complete and accurate reports to the OWNER and its agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from the OWNER or its agents that provides an unfair advantage over a competitor,
 - 4) not engage in any activity or course of conduct that restricts open and fair competition on OWNER-related projects and transactions,
 - 5) not engage in any course of conduct with OWNER employees or its agents that constitutes a conflict of interest, in fact or in appearance, and
 - 6) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The OWNER encourages the CONSULTANT to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the CONSULTANT may employ relatives of OWNER employees, the OWNER must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The OWNER reserves the right to request that the CONSULTANT modify the work assignment of a relative of an OWNER employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The CONSULTANT may hire former employees of the OWNER. However, as a general rule, former employees of the OWNER may neither appear nor practice before the OWNER, nor receive compensation for services rendered on a matter before the OWNER, for a period of *two years* following their separation from service with the OWNER. In addition, former employees of the OWNER are subject to a "*lifetime bar*" from appearing before the OWNER or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the OWNER.
- G. The CONSULTANT agrees to notify the OWNER's Office of Professional Integrity at 518-257-3378 of any activity by an employee of the OWNER that is inconsistent with the contents of this Section.
- H. Any violation of these provisions shall justify termination of this Contract and may result in OWNER's rejection of the CONSULTANT's bids or proposals for future contracts.

19. COOPERATION WITH INVESTIGATIONS

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

authorized representative of the OWNER (“Representative”).

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

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

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

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

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

20. FALSE STATEMENTS/INFORMATION

- A. False statements, information or data submitted on or with applications for payment may result in one or more of the following actions:
- 1) Termination of the Contract
 - 2) Disapproval of future contracts and sub-contracts
 - 3) Withholding of final payment on the Contract
 - 4) Civil and/or criminal prosecution
- B. These provisions are solely for the benefit of the OWNER, and any action or non-action hereunder by the OWNER shall not give rise to any liability on the part of the OWNER.

21. INVALID PROVISIONS

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

22. CONFLICTING TERMS

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

23. 2005 PROCUREMENT LOBBYING LAW

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

termination constituting a termination for cause, by providing written notification to the CONSULTANT in accordance with the terms of Article 7(A) of this Contract – Termination for Cause.

24. NONCOMPLIANCE

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

SAMPLE CONTRACT