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INSTITUTION
Building/Facility
DA# 0000 0000 0000

DESIGN PHASE

CONTRACT

A Contract, dated as of [LOI Date], 2021, by and between the **Dormitory Authority of the State of New York** ("**DASNY**" or the "**Owner**"), a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 of the Public Authorities Law of the State of New York, as amended and having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964 (the "**DASNY**"), and [**],** whose office is located at _____**,** (the "**CONSTRUCTION MANAGER**"); and

WHEREAS, the OWNER intends to _____ _____, hereinafter referred to as the Project; and

WHEREAS, the OWNER requires Construction Management Services during the Design Phase, the specific nature of said Services and responsibilities as described herein.

NOW, THEREFORE, the OWNER and the CONSTRUCTION MANAGER hereby mutually covenant and agree as follows:

ARTICLE I: SCOPE OF SERVICES

The CONSTRUCTION MANAGER's Services shall include, but not be limited to, all Articles of this Contract and all Services enumerated in Appendix "A", entitled SCOPE OF SERVICES, (hereinafter the Work), which is attached to and made a part hereof.

ARTICLE II: ADDITIONAL SERVICES

The OWNER reserves the right to direct the CONSTRUCTION MANAGER to provide Additional Services and the CONSTRUCTION MANAGER shall provide said Additional Services when so directed.

ARTICLE III: EXTRA WORK

If the CONSTRUCTION MANAGER 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 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.

ARTICLE IV: M/WBE AND SDVOB CONTRACT GOALS

The N.Y.S. certified Minority and Women-owned Business Enterprise (M/WBE) and OGS certified Service-Disabled Veteran-Owned Businesses (SDVOB) goals for this contract are %MBE, %WBE, and % SDVOB. The goals refer to the utilization of M/WBE and SDVOB sub-consultants on DASNY Professional Services Contracts.

ARTICLE V: CONSULTANTS

The OWNER may retain a Consultant or Consultants to furnish Services throughout the term of this Contract, and the CONSTRUCTION MANAGER shall cooperate with said Consultant or Consultants.

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ARTICLE VI: PROVISION FOR PAYMENT

A. DESIGN PHASE

For satisfactory performance of all Design Phase Services pursuant to Appendix "A", the OWNER shall pay, and the CONSTRUCTION MANAGER agrees to accept, as full compensation, the following:

1. Actual Direct Salary of all technical employees of the CONSTRUCTION MANAGER assigned to the Project. Actual Direct Salary, as used herein, shall not include allowances for insurance, payroll taxes, or other benefits listed in item A.2., Fringe Benefits.

Employees shall be paid their regular rate of pay while on vacation, holiday, and sick leave only in proportion to the period of time in which they are working on the Project. The CONSTRUCTION MANAGER's leave payment policy is subject to pre-approval by the OWNER.

For the purpose of this Article, Technical Employees shall mean employees trained in areas of technical competence, such as architecture, engineering, drafting, survey, and related specialties, but shall not include clerical, typing or stenographic assistance, or principals. Pay rates for technical employees and their appropriate titles are listed in Appendix "B", entitled **SCHEDULE OF APPROVED PERSONNEL CLASSIFICATIONS AND MAXIMUM DIRECT SALARY RATES**, which is attached to and made a part hereof.

Certified payroll records for all employees for which reimbursement is sought under Article V.A. shall be supplied to the OWNER upon request and made available to the OWNER for inspection or audit at the OWNER's option at any time during the life of this Contract and for a period of six (6) years after final payment.

Reimbursement to the CONSTRUCTION MANAGER for Actual Direct Salary costs for Design Phase Services shall Not Exceed _____ and 00/100 Dollars ($_____).

2. Fringe Benefits are the cost to the CONSTRUCTION MANAGER of Fringe Benefits applicable to Actual Direct Salary costs pursuant to Article V.A.1. above. Allowable Fringe Benefit items as provided for herein shall be limited to the following specific items:

a. F.I.C.A.;
b. Federal Unemployment Insurance;
c. State Unemployment Insurance;
d. NYS Workers Compensation;
e. Life Insurance;
f. Accidental Death and Dismemberment;
g. NYS Disability Insurance;
h. Group Hospitalization;
i. Pension Plan; and
j. Group Travel Accident Insurance

Reimbursement to the CONSTRUCTION MANAGER for Fringe Benefit costs for Design Phase Services shall be paid at __% of the Actual Direct Salary costs and shall Not Exceed _____ and 00/100 Dollars ($, .00).

Total Actual Direct Salaries and Fringe Benefits $, , NTE

3. Design Phase Fee is currently estimated in the amount of _____ and 00/100 Dollars ($ .00).

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The Design Phase Fee, pursuant to Article V.A.3., is not a fixed fee and is payable as a percentage of the total monthly cost for Actual Direct Salaries.

The fee shall be __% of the total cost for Actual Direct Salary expended during the month.

4. Consultant's Costs is currently estimated in the amount of _____ and 00/100 dollars ($0.00).

Consultant's Costs, if required, shall be approved by the OWNER. Monthly bills for said Consultant's Costs shall be submitted to the OWNER together with sufficient supporting documentation in form and content satisfactory to the OWNER. The CONSTRUCTION MANAGER shall not be reimbursed any markup on Consultant's Costs.

5. Miscellaneous Reimbursable Costs as approved by the OWNER. An allowance for Miscellaneous Reimbursable Costs is hereby established in the Not to Exceed amount of _____ _____ and 00/100 Dollars ($, .00).

6. The MAXIMUM AMOUNT PAYABLE to the CONSTRUCTION MANAGER for all Services required pursuant to this Design Phase shall be the sum of paragraphs 1., 2., 3., 4., and 5 of Article VI.A. and shall Not Exceed _____ _____ and 00/100 Dollars ($, , .00).

The MAXIMUM AMOUNT PAYABLE is summarized in Appendix "C", entitled SUMMARY OF PAYMENTS, which is attached to and made a part hereof.

Payments for Services shall be made monthly in proportion to Services performed and approved by the OWNER. Payments shall be requisitioned on the OWNER's form, **PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION** with accompanying payroll copy, and other appropriate backup. Payroll copy shall show the names and rates of pay of all personnel performing services during the payment period, and their position classification. Only said form shall be used for reimbursement of Services.

Payment to the CONSTRUCTION MANAGER shall only be rendered electronically, unless payment by paper check is authorized in writing by the OWNER. The CONSTRUCTION MANAGER further acknowledges and agrees that the OWNER may withhold payments, if the CONSTRUCTION MANAGER has not complied with the OWNER's requirements relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the OWNER.
The CONSTRUCTION MANAGER is required to submit payment requests to the OWNER, on behalf of subconsultants, within thirty (30) days of receiving approvable subconsultant invoices.

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

ARTICLE VII: WITHHOLDING OF PAYMENTS

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

1. to assure payment of just claims of any persons supplying labor or materials for the Work;

2. to protect the OWNER from loss due to defective Work not remedied;

3. to protect the OWNER, Client, Construction Manager, if applicable, or other such entities as identified by the OWNER as Additional Insureds from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of others caused by the act or neglect of the CONSTRUCTION MANAGER or Subconsultant;

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4. to assure payment of fines, liquidated damages and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to the provisions of this Contract; or

5. to assure payment of fines and penalties which may be imposed on the CONSTRUCTION MANAGER pursuant to Article 17 - Affirmative Action in the Additional Items appendix, Section 17.1 paragraph D., subdivisions 6.g and 6.h. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

ARTICLE VIII: FINAL PAYMENT AND RELEASE

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

Acceptance by the CONSTRUCTION MANAGER of final payment hereunder shall operate as, and shall be, a release to the OWNER from all claims and liability to the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER from any obligations under this Contract.

ARTICLE IX: OWNER'S PROCEDURE

The CONSTRUCTION MANAGER agrees to comply with all procedural requirements of the OWNER as they apply to reports or other aspects of the Project. In addition, during the Design Phase of this Contract, the CONSTRUCTION MANAGER shall comply with all procedural requirements of the Client. Client is herein defined as the entity for whom the OWNER is performing services, including subsidiaries, agents, related corporations, or fiduciaries.

ARTICLE X: INSURANCE PROVIDED BY CONSTRUCTION MANAGER

1. The CONSTRUCTION MANAGER 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 OWNERand of the insurance companies issuing such policies.
2. The CONSTRUCTION MANAGER and Subconsultants 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 CONSTRUCTION MANAGER and Subconsultants shall maintain such insurance policy in force for the specified period beyond issuance of the Notice of Physical Completion.
3. All insurance required to be procured and maintained by the CONSTRUCTION MANAGER and Subconsultants 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.
4. All insurance policies required to be procured and maintained by the CONSTRUCTION MANAGER and Subconsultants 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.
5. All insurance policies required to be procured and maintained by the CONSTRUCTION MANAGER and Subconsultants 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

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from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the OWNER.

6. All insurance policies required to be procured and maintained by the CONSTRUCTION MANAGER and Subconsultants under this Contract shall be written on an occurrence basis except where this Contract explicitly allows otherwise.

7. All insurance policies required to be procured and maintained by the CONSTRUCTION MANAGER and Subconsultants under this Contract shall include a provision or endorsement that the OWNER and the Client(s) shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the CONSTRUCTION MANAGER 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 requires the CONSTRUCTION MANAGER or any Subconsultant to maintain an insurance policy, the OWNER may require the CONSTRUCTION MANAGER or any Subconsultant to provide proof, acceptable to the OWNER in its sole discretion, that the CONSTRUCTION MANAGER or Subconsultant has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the CONSTRUCTION MANAGER or Subconsultant may be liable under the claims pending or reasonably possible against the CONSTRUCTION MANAGER or Subconsultant at the time the OWNER requires the proof. A failure of the CONSTRUCTION MANAGER or Subconsultant to provide such proof is a failure of the CONSTRUCTION MANAGER 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.

8. All insurance policies required to be procured and maintained by the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER's policies or any of the policies of any Subconsultant prohibit such a waiver of subrogation, the CONSTRUCTION MANAGER or Subconsultant shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the OWNER.

9. Each liability and protective liability insurance policy required to be procured and maintained by the CONSTRUCTION MANAGER and Subconsultants under this Contract 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 CONSTRUCTION MANAGER'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 CONSTRUCTION MANAGER's or Subconsultant's insurance policies.

10. Any Professional Contract Documents, including but not limited to the Request for Proposal, but excluding Change Orders, may require any of the CONSTRUCTION MANAGER and Subconsultants to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the OWNER or Client(s).

11. Notwithstanding any other provision of the Contract, the OWNER, in a Change Order or Contract Amendment, may require the CONSTRUCTION MANAGER and any or all Subconsultants to provide, at the expense of the OWNER, any other form or limit of insurance in addition

12. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Client(s), the Professional or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the CONSTRUCTION MANAGER or any Subconsultant from any of the obligations or risks accepted by the CONSTRUCTION MANAGER 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 and Client(s).

13. All provisions of this Article 10-– Insurance 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 CONSTRUCTION MANAGER, 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 CONSTRUCTION

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MANAGER's and each Subconsultant's obligations to procure insurance.

14. CONSTRUCTION MANAGER is responsible for ensuring that each Subconsultant obtains and maintains in the required amount each type of insurance policy required by this Contract and that such insurance policy provides the Owner and Client(s) with the coverage required by this Contract.

15. CONSTRUCTION MANAGER agrees and acknowledges that, because the CONSTRUCTION MANAGER (and not the Owner or Client[s]) is responsible for performance of the duties and obligations set forth in this Contract for completion of the Project, the CONSTRUCTION MANAGER, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the Owner and Client(s).

B. Submission of Insurance

1. OWNER will not execute the Contract unless the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

2. The CONSTRUCTION MANAGER 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 and Client(s), and such other documents requested by the OWNER as proof of insurance for the CONSTRUCTION MANAGER. All insurance submittals must be approved by the OWNER or the OWNER's designee prior to the CONSTRUCTION MANAGER's commencement of work.

3. Upon the OWNER's request, the CONSTRUCTION MANAGER shall submit to the OWNER or OWNER's designee proof of insurance for one or more Subconsultants, in such forms as requested and deemed acceptable by the OWNER, indicating the Project, and showing evidence of all insurance required under the Contract. Upon the OWNER's request, the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, constitute a warranty by the CONSTRUCTION MANAGER, the Subconsultant and the Subconsultant's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

4. Upon request of the OWNER made any time after bids are opened, the CONSTRUCTION MANAGER 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 and Clients(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.

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C. Insurance Provided by the Construction Manager

1. Prior to award of the Contract, the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 **(Acord certificates are not acceptable):**
        i. 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.
        ii. 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.
        iii. 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 Construction Manager's Group Self Insurance Administrator shall provide a completed form.
        iv. 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 Construction Manager'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:
        i. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
        ii. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
        iii. 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 CONSTRUCTION MANAGER or Subconsultant for bodily injury, property damage, and personal/advertising injury arising from performance of the work or operations or presence at or in the vicinity of the Site of the Contract. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least $5,000,000; the general aggregate limit shall be at least $5,000,000; 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 $5,000,000. 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:
        i. If the CONSTRUCTION MANAGER or Subconsultant proposes the use of a policy other than the ISO form CG 00 01 12 07, the CONSTRUCTION MANAGER 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

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coverage. The CONSTRUCTION MANAGER 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.

ii. ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority, Client(s), any other entities as required by the Professional Contract Documents, and if applicable, 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.

iii. If the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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. CONSTRUCTION MANAGER 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.

iv. Additional insured status for Owner, Client(s), and any other entities as required by the Professional Contract Documents shall apply during the Products/Completed Operations phase as well as during the course of performance of the work of the Contract.

v. The policy provisions required by Section A of this Article X.

vi. Excavation, Collapse and Underground Hazards.

vii. Independent consultants/subconsultants.

viii. 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.

ix. 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.

x. Premises liability.

xi. Defense and/or indemnification obligations, including obligations assumed under this Contract.

xii. Cross liability for additional insureds.

xiii. CONSTRUCTION MANAGER and Subconsultant means and methods.

xiv. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.

xv. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.

xvi. The maximum deductible or self-insured retention shall be $50,000.

xvii. 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 CONSTRUCTION MANAGER or any Subconsultant.

xviii. No endorsement or provision in the policy shall require privity of contract between the Owner, Professional, Subconsultant, Client(s) or the Construction Manager to have coverage as an insured on such insurance policy.

xix. If the CONSTRUCTION MANAGER or Subconsultant must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.

xx. No endorsement or provision in the policy shall have a height limitation or exclusion.

xxi. No endorsement or provision in the policy shall have a classification exclusion with respect to work performed for the Owner and Client(s).

xxii. Owner or Client(s) shall be covered for any and all liability arising out of acts or omissions of CONSTRUCTION MANAGER and any Subconsultant.

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d. Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract, 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.

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 CONSTRUCTION MANAGER'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 Professional's or Subconsultant's insurance policies.

f. Professional Liability insurance: Each of the CONSTRUCTION MANAGER 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 Two (2) million dollars issued to and covering damage for liability imposed on the CONSTRUCTION MANAGER or Subconsultant 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 CONSTRUCTION MANAGER or Subconsultant, shall have extended Discovery Clause coverage of at least three (3) years after issuance by the OWNER of the Notice of Physical Completion if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is $100,000.

2. Notwithstanding any other provision of the Contract to the contrary and to the fullest extent permitted by law, CONSTRUCTION MANAGER 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, Client(s) by any insurer for which CONSTRUCTION MANAGER represented that the Owner and 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 Construction Manager

1. The CONSTRUCTION MANAGER and each Subconsultant shall also procure and maintain as required by Sections A. 2. and C. 1. of this Article X, the following insurance:

   a. United States Longshore and Harbor Workers' Compensation Act and Jones Act: When, to perform the work in connection with this Contract, the CONSTRUCTION MANAGER or any Subconsultant is engaged in activities on or near a shoreline or on or near the navigable waterways of the United States or when any part of the work is connected to water related activities, the Workers' Compensation policy referenced above of the CONSTRUCTION MANAGER and any such Subconsultant shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.

   b. Professional's Pollution Liability insurance: When the work in connection with this Contract includes abatement, removal, repair, replacement, enclosure, encapsulation or disposal of any pollutants, which

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include but are not limited to, petroleum, petroleum products, mold, asbestos, lead or any other Hazardous Material, the CONSTRUCTION MANAGER or any Subconsultant performing work involving any of the pollutants, shall procure and maintain in full force and effect pollution legal liability insurance with limits of at least $2,000,000 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:

i. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and other entities specified on the sample certificate of insurance provided by the OWNER in the bidding documents.
ii. The policy provisions required by Section A. of this Article X.
iii. A maximum deductible or self-insured retention of $50,000.
iv. 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 or Client(s) arising from the work in connection with this Contract.
v. 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 CONSTRUCTION MANAGER shall provide and maintain a Railroad Protective Liability policy with the policy limits required by the owner(s) of the railroad. For purposes of this section, a subway is a railroad. The policy form shall be ISO-RIMA or an equivalent form approved by the owner(s) of the railroad. The railroad owner(s) shall be the named insured on the policy and the definition of "physical damage to property" shall mean direct and accidental loss of or damage to all property of any named insured and all property in any named insured's care, custody, or control. If the CONSTRUCTION MANAGER shall provide a Railroad Protective Liability insurance policy, the CONSTRUCTION MANAGER and any Subconsultant performing on or within fifty (50) feet of railroad property or railroad right of way or entering railroad property or right of way or requiring assignment of a railroad employee shall have their CGL insurance policy endorsed to delete the exclusion of coverage for work within fifty (50) feet of railroad property.

d. Unmanned Aircraft System (UAS) Insurance: Any CONSTRUCTION MANAGER or Subconsultant proposing the use of any Unmanned Aircraft System for any purpose on a Project, including but not limited to investigation, surveying, photography, inspections or observation, shall comply with all of Owner's policies and procedures regarding such use and shall provide coverage, in the form of an Unmanned Aircraft System (UAS) endorsement to the Commercial General Liability Coverage required above or Aircraft Liability Coverage with a minimum limit of $1,000,000. Such coverage shall name the Owner and any required third parties as additional insureds.

e. Marine Protection & Indemnity insurance and Hull & Machinery insurance: Each of the CONSTRUCTION MANAGER and any Subconsultant performing any work in connection with this Contract 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 CONSTRUCTION MANAGER 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(s) 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:

i. The policy provisions required by Section A. of this Article X.
ii. A maximum deductible or self-insured retention of $50,000.
iii. Coverage shall be provided until the OWNER issues the Certificate of Physical Completion.
iv. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and other entities specified on the sample certificate of insurance provided by the OWNER in the bidding documents.

SAMPLE

E. Stop Work Order - Insurance

1. All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The CONSTRUCTION MANAGER shall be responsible to submit updated insurance certificates to the OWNER or the OWNER's designee thirty (30) calendar days prior to any insurance certificate expiration date.

2. Failure of the CONSTRUCTION MANAGER or any Subconsultant 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 Appendix A, Section D (23) and Appendix E, Section 7. Termination and/or withholding of payment to the CONSTRUCTION MANAGER.

3. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CONSTRUCTION MANAGER or Subconsultant shall immediately cease work on the Project. The CONSTRUCTION MANAGER or Subconsultant shall not resume work on the Project until authorized to do so by the OWNER or the OWNER's designee.

4. Any delay or time lost as a result of the CONSTRUCTION MANAGER 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 delay Claim or any other Claim against the OWNER. Further, the CONSTRUCTION MANAGER may be liable to other consultants for costs incurred by reason of the CONSTRUCTION MANAGER's, Subconsultant's or Subcontractor's failure to provide insurance.

G. Subcontractor Insurance Requirements

1. To the extent that the CONSTRUCTION MANAGER or any Subconsultant retains any Subcontractor in connection with the Project, such Subcontractor's insurance obligations are identical to the obligations placed upon Subconsultants pursuant to Sections A., B., C., D. and E. of Article X of this Contract, except that Article X, Section A. 2, and Section C. 1 (f) of this Contract shall not apply to any Subcontractor. Notwithstanding the above, such Subcontractors shall only be required to maintain its insurance policies until Notice of Physical Completion or as otherwise directed by OWNER.

ARTICLE XI: INSURANCE PROVIDED BY THE OWNER

A. The OWNER shall, except as otherwise specified, at all times during the period of construction and until physical completion and acceptance, procure and maintain, at the cost and expense of the OWNER, "All Risk" Builders Risk Insurance. The Contractors and Subcontractors will be covered for their work. Losses up to and including $5,000 shall be borne by the CONSTRUCTION MANAGER, PRIME CONTRACTORS and/or its Subcontractors. Reimbursement for loss, if any, is to be made payable to the OWNER. The OWNER shall, at the OWNER'S sole discretion, have power to adjust and to settle with the insurer any loss or claim under said insurance.

B. Coverage shall include sublimits for property in transit and for property in storage on the job site. Specific higher limits for transit/storage are available as circumstances may require upon request by any Named Insured to the OWNER'S Risk Management Unit.

ARTICLE XII: INSURANCE PROVIDED BY PRIME CONTRACTORS

The OWNER shall include in the contracts between the OWNER and each of the separate Prime Contractors the following requirements:

1. The CONSTRUCTION MANAGER be specifically named as an indemnity in the Indemnification and Hold Harmless furnished by each of the Prime Contractors to the OWNER; and

2. That the CONSTRUCTION MANAGER be specifically included as an Additional Insured in all liability insurances furnished by each of the Prime Contractors to the OWNER.

SAMPLE

3. Insurance provided by the Prime Contractors is required to be endorsed as primary with respect to the coverage afforded to the additional insureds.

4. It shall be the responsibility of the CONSTRUCTION MANAGER to obtain a copy of each Prime Contractors Certificate of Insurance, in order to ensure that the CONSTRUCTION MANAGER is included as an additional insured thereunder.

ARTICLE XIII: PROTECTION OF RIGHTS, PERSONS AND PROPERTY

A. Accident Prevention

The CONSTRUCTION MANAGER shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in the performance of the Work on the Job Site. The CONSTRUCTION MANAGER shall establish and maintain, at all times, safety procedures in connection with the Work as required by the current New York Labor Law and regulations of the Occupational Safety and Health Act (OSHA).

B. Risks Assumed by the CONSTRUCTION MANAGER

1. The CONSTRUCTION MANAGER solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the Work, and whether said risks involve any legal duty, primary or otherwise, imposed upon the OWNER or the Client, excepting only risks which arise from faulty designs as shown by the plans and specifications or from the negligence of the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, (hereinafter Protected Persons), that caused the loss, damage, or injuries hereinafter set forth:

a. the risk of loss or damage to the Work or to any plant, equipment, tools, materials, or property furnished, used, installed, or received by the Protected Persons. The CONSTRUCTION MANAGER shall bear said risk of loss or damage until the Work is completed or until completion or removal of said plant, equipment, tools, materials or property from the site and the vicinity thereof, whichever event occurs last, and in the event of said loss or damage, the CONSTRUCTION MANAGER shall timely repair, replace or make good any said loss or damage after notification to the OWNER’s representative and Risk Management Unit, and;

b. the risk of claims, just or unjust, by third persons against the Protected Persons on account of wrongful death, bodily injuries, and property damage, arising or alleged to arise out of, or as a result of, or in connection with the performance by the CONSTRUCTION MANAGER of the Work. The CONSTRUCTION MANAGER shall bear the risk for all deaths, injuries, damages, or losses sustained or alleged to have been sustained prior to the Final Acceptance of the Work, or resulting from the CONSTRUCTION MANAGER's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the OWNER, and;

c. the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the negligent or alleged negligent execution of the Work. The CONSTRUCTION MANAGER shall assume the defense and pay on behalf of the Protected Persons, any and all loss, expense, damage, or injury that the Protected Persons, may sustain as the result of any claim, provided however, the CONSTRUCTION MANAGER shall not be obligated to indemnify the Protected Persons for their own negligence, if any. The CONSTRUCTION MANAGER agrees to assume, and pay on behalf of the Protected Persons, the defense of any

SAMPLE

action at law or equity which may be brought against the Protected Persons. The assumption of defense and liability by the CONSTRUCTION MANAGER includes, but is not limited to: the amount of any legal fees associated with defending, all costs of investigation, expert evaluation, and any other costs including any judgment or interest or penalty that may be entered against the Protected Persons, in any said action.

2. The CONSTRUCTION MANAGER's obligations under this Article shall not be deemed waived, limited, or discharged by the enumeration of procurement of any insurance for liability for damages.

3. Neither Final Acceptance of the Work nor making any payment shall release the CONSTRUCTION MANAGER from the CONSTRUCTION MANAGER's obligations under this Article. The enumeration elsewhere in the Contract of particular risks assumed by the CONSTRUCTION MANAGER or of particular claims for which the CONSTRUCTION MANAGER is responsible shall not be deemed to limit the effect of the provisions of this Article or to imply that the CONSTRUCTION MANAGER assumes, or is responsible for, only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in the Contract of particular risks assumed by the CONSTRUCTION MANAGER of particular claims for which the CONSTRUCTION MANAGER is responsible shall be deemed to limit the risks which the CONSTRUCTION MANAGER would assume or the claims for which the CONSTRUCTION MANAGER would be responsible in the absence of said enumerations.

C. Protection of Lives and Health

1. The CONSTRUCTION MANAGER shall identify any unique feature or aspect of the Project which could lead to personal injury or property damage during the course of demolition and/or construction of the Project. These features or aspects shall be fully described, and a separate portion of any design, plan, or specification developed by the CONSTRUCTION MANAGER shall include a description of the feature or aspect which creates the threat of bodily injury or property damage. The same section of any design, plan, or specification shall set out which building trade or Contractor will be responsible for establishing procedures, including warnings and safety devices, related to the potential bodily injury or property damage causing features or aspects of the Project.

ARTICLE XIV: HOLD HARMLESS

In addition to any risks specifically assumed by the CONSTRUCTION MANAGER under Article XII, the CONSTRUCTION MANAGER hereby agrees to indemnify and hold harmless the OWNER, the Client, or the OWNER's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CONSTRUCTION MANAGER, and shall pay any judgment or expense, including interest, imposed against any of them for injury, wrongful death or property damage, and to defend and pay the costs and expenses thereof, any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein.

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 Client, or 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 CONSTRUCTION MANAGER the percentage of defense costs which the CONSTRUCTION MANAGER incurred based upon an apportionment of the OWNER'S allocated responsibility.

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

The CONSTRUCTION MANAGER shall maintain, and shall keep for a period of six (6) years after the date of final payment, all records and other data relating to the Project. The OWNER or the OWNER's Representative shall have the right to inspect and audit all records and other data of the CONSTRUCTION MANAGER relating to the Project.

SAMPLE

ARTICLE XVI: APPENDIX "D" ADDITIONAL ITEMS

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

ARTICLE XVII: ASSIGNMENT

The Construction Manager 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 Construction Manager.

ARTICLE XVIII: THE CONTRACT DOCUMENTS

The Contract for Construction Management Services between the OWNER and the Construction Manager sets forth the Construction Manager's scope of services and is comprised of the following documents:

- this **Design Phase Contract**, and all attached documents and appendices;
- the **OWNER's "Request for Proposal"**, and all attached documents and appendices, incorporated herein by reference;
- the **Construction Manager's Response to the OWNER's Request for Proposal,** and all attached documents and appendices, incorporated herein by reference.

ARTICLE XIX: INTERPRETATION

In the event of any discrepancy, disagreement or ambiguity among the following documents, they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

1. Design Phase Contract
2. OWNER's Request for Proposal
3. CONSTRUCTION MANAGER's Response to the OWNER's Request for Proposal.

ARTICLE XX: TIME OF COMPLETION

For the purposes of this Contract, the planned Start Date is _____, 20___, and the planned Completion Date for the Design Phase shall be _____, 20___.

ARTICLE XXI: 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

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

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:

_____ (N**AME)**

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

SAMPLE

APPENDIX "A"
SCOPE OF SERVICES

DESIGN PHASE

The CONSTRUCTION MANAGER shall:

1. understand the functions of the Client, OWNER, Design Professional, Consultants, and others with respect to each other and the Project;

2. visit the site and make note of any adverse conditions which may relate to the Project program, and any site restrictions or conditions which may affect the design or construction process, and notify the OWNER accordingly;

3. attend all meetings concerned with the Project and report the proceedings to the OWNER in writing within four (4) days;

4. in the earliest design stage, advise the OWNER and the Design Professional concerning the type of architectural, structural, and mechanical systems proposed to be used based on energy conservation, labor costs, and economic and time limitations. Advise on type and use of materials. Propose cost savings and alternatives;

5. review continuously throughout the Design Phase the Contract Documents prepared by the Design Professional and make recommendations concerning the following:

   a. availability of materials;
   b. availability of labor;
   c. avoidance of labor jurisdictional disputes and excessive and unnecessary labor costs;
   d. avoidance of Contractor and Subcontractor jurisdictional disputes;
   e. construction detailing;
   f. temporary on-site facilities necessary to enable the Contractor(s), CONSTRUCTION MANAGER, Design Professional, and OWNER to perform their functions;
   g. temporary requirements for construction;
   h. location of on-site storage and nearby storing areas;
   i. testing programs; and
   j. areas likely to result in Contractor claims;

6. check the Contract Documents for coordination among the drawings, between the drawings and specifications, and between specifications and General Conditions. Monitor Historic Preservation requirements of the Project, if any;

7. perform a final detailed review of the completed Contract documents, and provide copies of the final marked up set of Contract documents and the accompanying recommendations to the OWNER, prior to the bidding of the project upon the request of the OWNER.

8. prepare a cost analysis of the Project at the following design milestones in such form and detail as required by the OWNER:

   a. Completion of Design Development Phase – 60% Submission

Upon completion of the Design Development Document Phase by the Design Professional, provide a cost estimate based upon a detailed take-off of labor, materials and equipment, based upon experience and nationally recognized Construction Specifications Institute (CSI) based estimating systems such as R.S. Means ® or other generally accepted standard cost estimating system acceptable to the Owner, and including an appropriate design contingency, bidding contingency, contractor's overhead and profit, escalation and trade contractor or construction manager general conditions costs as directed by the Owner. The estimate shall be prepared using the Owner provided "Consultant Cost Estimating Workbook". Upon prior written approval of the Owner, the Professional may prepare the estimate in an alternative format provided the estimate includes at a minimum, all information contained in the Owner supplied format. The Professional shall provide a reconciliation to the previous cost estimate and the Approved Construction Budget. The reconciliation shall include an explanation of any variances or overall increases.

SAMPLE

b. 100% Construction Document Services – 100% Submission

Upon completion of 100% Construction Documents by the Design Professional, the CM shall provide a final cost estimate based upon a detailed take-off of labor, materials and equipment, based upon experience and nationally recognized Construction Specifications Institute (CSI) based estimating systems such as R.S. Means ® or other generally accepted standard cost estimating system acceptable to the Owner. The cost estimate shall provide quantities, unit costs for materials and equipment, labor units for the installation of the materials and equipment, and wage rates (including base rate, taxes, insurance and fringe benefits) for the installation of the materials and equipment. The cost estimate shall include an appropriate design contingency, bidding contingency, contractor's overhead and profit, escalation and trade contractor or construction manager general conditions costs as directed by the Owner. The estimate shall be prepared using the Owner provided "Consultant Cost Estimating Workbook". Upon prior written approval of the Owner, the Professional may prepare the estimate in an alternative format provided the estimate includes at a minimum, all information contained in the Owner supplied format. The Professional shall provide a reconciliation to the previous cost estimate and the Approved Construction Budget. The reconciliation shall include an explanation of any variances or overall increases. The cost estimate shall be in the same format as the Owner's Schedule of Values.

At this phase of design documents, the CONSTRUCTION MANAGER shall submit to the OWNER, in addition to the system estimate as outlined previously, an estimate formatted as outlined by the Construction Specifications Institute (CSI).

The Construction Specifications Institute (CSI) estimate shall provide quantities, unit costs for material, equipment, and labor units for the installation of the materials, and wage rates (to include base rate, insurances, taxes, and fringes) for the installation of the material and equipment.

d. Upon completion of final cost estimate for each phase of design, the CONSTRUCTION MANAGER will schedule a meeting with the OWNER, Client, and Consultants to reconcile this estimate. In the event of discrepancies in the cost estimate, additional meetings will be scheduled as required to resolve these discrepancies;

9. advise the OWNER, Design Professional, and all other Consultants of the most favorable method of contracting for the Project taking into account the following:

a. current bidding climate;
b. optimum number of bid packages;
c. dates of bidding;
d. use of "fast-track" if pre-approved by the OWNER; and
e. OWNER's Affirmative Action program;

10. develop and coordinate with appropriate Consultants, bid packages to effectively implement the method agreed upon in Item 9;

11. engage field Consultants and experts, as may be required by the OWNER;

12. prepare a monthly report to the OWNER on the progress of the design work in relation to the design schedule and budget with copies to the Design Professional;

13. attend all pre-bid meetings scheduled by the OWNER;

14. analyze bids received and make recommendations concerning the award of all Contracts;

15. Design Phase Project Scheduling

a. Definitions'

Project: Work at the Site carried out pursuant to one or more sets of Contract Documents.

Scope, Budget and Schedule Confirmation Form: A standard Owner's form, executed by the Owner, the Client, the Design Professional and/or the Construction Manager, agreeing in principal to the Project's scope, budget and schedule.

SAMPLE

Activity: A discrete part of the Contract that can be identified for planning, scheduling, monitoring, and controlling the Project. Activities included in a CPM schedule consume time and resources.

i. Critical Activity: An activity on the critical path that has no total float.
ii. Predecessor Activity: An activity that precedes another activity in the network.
iii. Successor Activity: An activity that follows another activity in the network.

Bid Milestone Schedule: Interim milestones, included in the Contract Documents, which the Contractor utilizes to formulate the Baseline Schedule.

Baseline Schedule: Initial schedule, prepared by the Contractor, to complete the Work of the Contract in accordance with the Contract duration and starting point to which schedule updates are compared.

CPM: Critical path method is a scheduling method used to plan and schedule construction projects where activities are arranged based on activity relationships creating a time scaled network diagram.

PDM: Precedence diagram method follows the standard CPM calculations and allows for special logic relationships creating an interdependent relationship throughout the network.

Critical Path: The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall Project duration and contains no total float.

b. Quality Assurance

Project Scheduler Qualifications: Provide an experienced person in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within timeframes requested by the Owner. The project scheduler shall have or be able to obtain certification as a Planning and Scheduling Professional (PSP) or have a minimum of five years of demonstrated experience scheduling large capital projects.

Computer Scheduling Software: Prefixed by the Owner's template - prepare CPM schedules using current version of a program that has been developed specifically to manage CPM schedules and interface with the Owner's electronic file, utilize Primavera P6 or P3 Primavera Project Planner operating system.

Evaluate Scheduling Requirements: Evaluate the Construction Phase Schedule for conformance with industry standards, reasonableness of overall proposed schedule duration and methodology. Provide recommendations and possible alternative solutions, which at minimum addresses:

i. Available labor resources.
ii. Construction sequence, logical progression of the Work.
iii. Phasing, long lead items.
iv. Critical path.
v. Contract milestones, division of Work.

c. Scheduling Requirements

Scope, Budget and Schedule Confirmation Form: Execute the initial Form prior to commencement of the Predesign Phase of the Project. Subsequently, the form shall be updated and executed at each planned design phase, (schematic, design development, construction documents phases), the final Form shall be updated and executed with the Bid Document phase submission.

Construction Phase Schedule: Prepare an expanded schedule for the Construction Phase of the Project using a time-scaled PDM network diagram representing major milestone activities unique to each proposed Contract.

Include skeleton diagram, which outlines significant construction milestone activities of each proposed Contract, which will formulate the Bid Milestone Schedule. Indicate activities such as:

i. Notice to Proceed.

SAMPLE

ii. Major milestone activities unique to each Contract.
iii. Phasing.
iv. Critical Path.
v. Substantial Completion.
vi. Contracts Closeout.

Bid Milestone Schedule Preparation: Formulate the Bid Milestone Schedule from the Construction Phase Schedule requirements as indicated above. Attach a copy of the Bid Milestone Schedule to General Requirement Section 013200 – Construction Progress Documentation in the Project Manual. The Bid Milestone Schedule shall form the basis for each Contractor to prepare their Baseline Schedule.

16. Develop a payment breakdown to be included in the bid documents for each construction contract. The payment breakdown shall contain information required by the Owner. The payment breakdown shall be transmitted, or be transmissible, electronically, in a file type, layout and format specified by the Owner.

The Trade Payment Breakdown will be developed in a format comparable to the CONSTRUCTION MANAGER's 100% Construction Document, Construction Specification Institute (CSI) estimate.

Participate, as directed by the OWNER, in the investigation of the experience and performance record of the apparent low bidder(s).

The CONSTRUCTION MANAGER shall participate in a post bid/pre-award meeting(s) with the low bidder(s).

The CONSTRUCTION MANAGER will prepare a spreadsheet that will allow for the comparison of the bidder(s) Trade Payment Breakdown and the CONSTRUCTION MANAGER's 100% Construction Document estimate, line item against line item. The spreadsheet will illustrate, in dollars and percentage, the variance, if any, between line items.

The CONSTRUCTION MANAGER will then reconcile any variance with the Contractor.

Upon reconciling all variances with the Contractor, the CONSTRUCTION MANAGER will submit to the OWNER for the OWNER's approval, a Trade Payment Breakdown that includes only the Contractor's portion of the Trade Payment Breakdown. The comparison spreadsheet will be attached as back-up to the Trade Payment Breakdown.

17 Project Management System

For projects with an Approved Construction Budget greater than five million and 00/100 Dollars ($5,000,000.00), or as directed by the Owner, the Construction Manager shall provide all project scheduling deliverables from the current versions of Primavera SureTrak ™ or P6 ™ . The Owner will provide the Construction Manager with Templates to be used in the generation of the project schedule(s). In addition, the Construction Manager shall use the current version of Primavera Contract Manager ™ (the Project Management System) in accordance with the Owner's protocol to manage all project-related correspondence, transmittals, meeting minutes, requests for information, deliverables, daily logs, project costs, change management and reporting.

The Owner may direct the Construction Manager to provide all the Project Management System functions of Paragraph A of this Article from available web-based and/or Application Service Provider (ASP) system(s) as selected by the Owner.

APPENDIX "B"

SCHEDULE OF APPROVED PERSONNEL CLASSIFICATIONS AND MAXIMUM DIRECT SALARY RATES

CLASSIFICATIONS	APPROVED MAXIMUM DIRECT HOURLY RATES (1)

SAMPLE

Project Manager	_____
Value Engineer	_____
Chief Estimator	_____
Quantity Estimator	_____
Scheduler	_____

(1) Assignment of Personnel

Assignment and time durations of all Construction Management Personnel assigned to the Project by the CONSTRUCTION MANAGER shall be subject to the approval of the OWNER. The OWNER may request the CONSTRUCTION MANAGER to remove from the Project any employee the OWNER deems incompetent, careless, or otherwise objectionable and replace said employee with more suitable personnel. The OWNER may also approve additional personnel classifications if deemed necessary.

(2) Monthly Requisitions

All payment requisitions must account for the time of all personnel by name, title, and approved daily rates.

SAMPLE

APPENDIX "C"

SUMMARY OF PAYMENTS

A. DESIGN PHASE

1.Actual Direct Salaries

2.Fringe Benefits

3.Design Phase Fee

4.Consultant's Costs

5. Miscellaneous Reimbursable Costs

6.MAXIMUM AMOUNT PAYABLE

Payments for Services shall be made monthly as approved by the OWNER. Payments shall be requisitioned on the OWNER's form, PROFESSIONAL SERVICES CONTRACT PAYMENT REQUISITION, with accompanying backup. Only said form shall be used for reimbursement of Services.

NTE = Not to Exceed
LS= Lump Sum

SAMPLE

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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER agrees that, in case of underpayment of wages to any worker engaged in the Work by the CONSTRUCTION MANAGER or any Subconsultant, the OWNER shall withhold from the CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER to the employees to whom said amount is due. The CONSTRUCTION MANAGER 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.

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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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, nor any person acting on behalf of said CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, nor any person on behalf of said CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER agrees as follows:

A. The CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER will send to each labor union or representative of workers with which the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER's Contract under clauses A. through G. (hereinafter called "nondiscrimination clauses"). If the CONSTRUCTION MANAGER was

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directed to do so by the contracting agency as part of the proposal or negotiation of this Contract, the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER'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 CONSTRUCTION MANAGER has not complied with these nondiscrimination clauses, and the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER satisfies the State Commissioner of Human Rights that the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, and an opportunity has been afforded the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER will take such action in enforcing said provisions of said

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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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER shall comply fully with all applicable laws, rules, and regulations.

5. CONTRACT DEEMED EXECUTORY

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

6. OWNERSHIP OF DOCUMENTS

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

7. TERMINATION

A. Termination for Cause

1. In the event that any provision of the Contract is violated by the CONSTRUCTION MANAGER or by any Subconsultant, the OWNER may serve written notice upon the CONSTRUCTION MANAGER of the OWNER's intention to terminate the Contract; such notice shall contain the reasons for the intention to terminate the Contract upon a date specified by the OWNER. If the violation or delay shall not cease or arrangements satisfactory to the OWNER shall not be made, the Contract shall terminate upon the date so specified by the OWNER. In the event of any such termination, the OWNER may take over the Work and prosecute same to completion by Contract or otherwise for the account and at the expense of the CONSTRUCTION MANAGER shall be liable to the OWNER for all costs occasioned the OWNER thereby. In the event of such termination the

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OWNER may take possession of and may utilize such materials, appliances, and plant as may be on the Site and necessary or useful in completing the Work.

2. If, after notice of termination of the CONSTRUCTION MANAGER under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the CONSTRUCTION MANAGER, Termination for Cause shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience" and the rights and obligations of the parties hereto shall in such event be governed by such clause.

B. Termination for Convenience

1. The OWNER, at any time, may terminate this Contract in whole or in part. Any such termination shall be effected by mailing or delivering to the CONSTRUCTION MANAGER a written notice of termination specifying the extent to which performance of Work under this Contract is terminated and the date upon which said termination becomes effective. Upon receipt of the notice of termination, the CONSTRUCTION MANAGER shall act promptly to minimize the expenses resulting from said termination. The OWNER shall pay the CONSTRUCTION MANAGER for actual expenses incurred by the CONSTRUCTION MANAGER and approved by the OWNER, including fringe benefits and fee, for the period extending from the date of the last approved payment requisition up to the effective date of the termination, but in no event shall the CONSTRUCTION MANAGER be entitled to compensation in excess of the total consideration of the Contract. In the event of said termination, the OWNER may take over the Work and prosecute same to completion by contract or otherwise and may take possession of and may utilize such materials, appliances, and plant as may be on the site and necessary or useful to complete the Work.

2. In the event of said termination, the OWNER may take over the Work and prosecute same to completion by contract, assignment of Subcontracts or otherwise and may take possession of and may utilize such materials, appliances as may be on the Project Site and necessary or useful to complete the Work.

8. SUSPENSION OR ALTERATION

A. The OWNER may order the CONSTRUCTION MANAGER in writing to suspend, delay, or interrupt performance of all or any part or the Work for a reasonable period of time as the OWNER may determine. The order shall contain the reason or reasons for issuance which may include, but shall not be limited to, the following: latent field conditions, substantial program revisions, acquisition of rights-of-way or real property, financial crisis, labor disputes, civil unrest, or Acts of God.

B. Upon receipt of a suspension order, the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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.

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9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

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

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

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

11. GOVERNMENT PROVISIONS

The CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER shall furnish any information and provide any assistance which the OWNER deemed necessary for the preparation of any certificates, reports, or materials required as a result of obtaining said grant or loan.

12. COOPERATION

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

13. LATE PAYMENT

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

14. DEATH OF THE CONSTRUCTION MANAGER

If the CONSTRUCTION MANAGER is an individual and that CONSTRUCTION MANAGER shall die prior to the said completed performance of this Contract, then the payment to the estate of said CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER. If the CONSTRUCTION MANAGER 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

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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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER relating to the Project, all plans and specifications in regard to the Project, and shall have a right to retain the services of another CONSTRUCTION MANAGER to complete the Project. If the CONSTRUCTION MANAGER is a professional or other corporation, then this paragraph shall not be applicable.

15. OWNER-CONSTRUCTION MANAGER RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

Each CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER'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 CONSTRUCTION MANAGER shall report on compliance to the OWNER or OWNER's Representative.

17. AFFIRMATIVE ACTION AND NEW YORK STATE BUSINESS AND LABOR PARTICIPATION

A. The CONSTRUCTION MANAGER agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the OWNER, to fully comply with and cooperate in the implementation of an Affirmative Action Plan designed to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for Minority/Women Business Enterprise (M/WBE) participation in the performance of the Work, in such form and substance as herein stated. Failure to demonstrate good faith efforts to meet its CONSTRUCTION MANAGER’s Workforce Utilization Plan will be a primary consideration for future responsibility determinations. The CONSTRUCTION MANAGER further agrees to incorporate all Affirmative Action provisions of the Contract in all subcontracts, regardless of tier.

B. The CONSTRUCTION MANAGER must submit to the OWNER, and the prospective Subconsultant's must submit to the CONSTRUCTION MANAGER, an Affirmative Action Plan which demonstrates its best efforts to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for MBE/WBE participation in the performance of the Work, in such form and substance as may be required by the OWNER. A meeting to review these submissions may be scheduled by the OWNER.

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C. These Affirmative Action provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Labor Law or other applicable Federal, State or local laws.

D. In Accordance with Article 15A of the Executive Law and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development, the CONSTRUCTION MANAGER agrees to be bound by the following clauses. In any circumstances of uncertainty or conflict, the Regulations of the Minority and Women's Business Development Division supersede this information.

1) Utilization Plan; Waivers

a. The CONSTRUCTION MANAGER shall submit to the OWNER a Utilization Plan on forms provided by the OWNER within ten days of notification of selection. The Utilization Plan shall list all Subconsultants and suppliers the CONSTRUCTION MANAGER intends to use on the Contract and indicate which ones are M/WBEs. The Utilization Plan shall be prepared to achieve the participation goals indicated in the Request for Proposal.

b. The OWNER will review the Utilization Plan and will issue to the CONSTRUCTION MANAGER a written notice of acceptance or deficiency within 20 days of its receipt. A notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the M/WBE participation goals and the reasons why it is not acceptable; (ii) elements of the Contract scope of work which the OWNER has determined can be reasonably structured by the CONSTRUCTION MANAGER to increase the likelihood of participation in the Contract by M/WBEs; and (iii) other information which the OWNER determines to be relevant to the Utilization Plan.

c. The CONSTRUCTION MANAGER shall respond to the notice of deficiency within seven business days of receipt by submitting to the OWNER a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the OWNER to be inadequate, the OWNER shall notify the CONSTRUCTION MANAGER and direct the CONSTRUCTION MANAGER to submit, within five business days, a request for a partial or total waiver of M/WBE participation goals on forms provided by the OWNER. Failure to file the waiver form in a timely manner may be grounds for disqualification of the proposal.

d. The CONSTRUCTION MANAGER who has made good faith efforts to obtain commitments from M/WBE Subconsultant's and suppliers prior to submitting its Utilization Plan may submit a request for waiver at the same time it submits its Utilization Plan. If a request for waiver is submitted with the Utilization Plan and is not accepted by the OWNER at that time, the provisions of clauses b. and c., regarding the notice of deficiency and written remedy will apply. In this case, the CONSTRUCTION MANAGER may submit a second request for waiver as directed by the OWNER.

e. If the CONSTRUCTION MANAGER does not submit a Utilization Plan, remedy deficiencies in a Utilization Plan, submit a request for waiver, or if the OWNER determines that the Utilization Plan does not indicate that the M/WBE

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participation goals will be met and/or that the CONSTRUCTION MANAGER has failed to document good faith efforts, the OWNER may disqualify the CONSTRUCTION MANAGER as being not-responsible.

f. The CONSTRUCTION MANAGER shall attempt to utilize, in good faith, any MBE or WBE identified within its Utilization Plan, at least to the extent indicated in the Plan.

2) Administration Hearing on Disqualification

a. If the OWNER disqualifies a CONSTRUCTION MANAGER for any of the reasons set forth in 1) e. above, the CONSTRUCTION MANAGER shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the OWNER to review the determination of disqualification and non-responsibility of the CONSTRUCTION MANAGER.

b. The hearing officer's determination shall be the final determination of the OWNER. Such final administrative determination shall be reviewable by a proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is commenced within 30 days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.

3) Good Faith Efforts

In order to show that it has made good faith efforts to comply with the M/WBE participation goals of this Contract, the CONSTRUCTION MANAGER shall submit such documentation as will enable the OWNER to make a determination in accordance with the criteria set forth in Section 313 of the Executive Law and the Rules and Regulations promulgated there under.

All firms that are awarded contracts by DASNY should use these Guidelines for the preparation of all “good faith efforts” documentation. If your firm incurs difficulty in meeting your Minority and Women-owned Business Enterprises (M/WBE) goals, these Guidelines can be utilized to assist your firm in preparing the required “good faith efforts” documentation.

Responses to information in the Guidelines should be given in an item-by-item format following the numerical sequence as presented and submitted with your Request for Waiver to the Office of Opportunity Programs. If you fail to adequately document and respond to each item, it may result in a finding of non-compliance. If you need assistance, please contact the Office of Opportunity Programs at (518) 257-3465 (Upstate) or (212) 273-5111 (Downstate).

GUIDELINES

1. Attach a copy of your completed Utilization Plan in accordance with your contractual M/WBE goals established in the DASNY contract.

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2. Provide a record of advertisements placed in general circulation, trade and minority and women oriented publications. Include the name of publications and dates of advertisements.

3. Provide a record of ALL written solicitations made to New York State certified minority and women-owned business enterprises obtained from the directory of certified businesses. Include dates and copies of solicitation made.

4. Provide a record of ALL responses received from New York State certified minority and women-owned business enterprises to any such advertisements and solicitations made. Include dates and copies of any written responses.

5. Provide a list of any pre-bid, pre-award, or other meetings attended with New York State certified minority or women owned businesses.

6. List the efforts undertaken to subdivide portions of the work into smaller components in order to increase New York State certified minority and women-owned business enterprise participation.

7. Did your firm seek additional assistance from the DASNY Office of Opportunity Programs or one of DASNY's Technical Assistance providers? Please provide documentation of your interaction.

8. Did your firm solicit any New York State certified minority and women-owned business enterprises located outside the region where the scope of work is to be performed? If so, what actions were taken to contact and assess the financial ability of those firms to participate?

9. Provide a description of all relevant contract documents, plans or specifications, or documents describing the scope of work which were made available to New York State certified minority and women-owned business enterprises for the purposes of soliciting their bids. Include the dates and manner in which these documents were made available.

10. Were the same subcontract terms and conditions offered to New York State certified minority and women-owned business enterprises as those offered in the ordinary course of business and to other subcontractors?

11. Has your firm made payments for work performed by New York State certified minority and women-owned business enterprises in a timely fashion for past work so as to facilitate continued performance by the certified businesses?

12. List any special considerations and/or concerns, which are preventing adequate New York State certified minority and women-owned business enterprises to participate.

4) Executive Order 162

a. Pursuant to Executive Order 162 (9 NYCRR 8.162) dated January 9, 2017, the CONSTRUCTION MANAGER and its Subconsultants and Subcontractors are required to submit quarterly *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.*

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162 Workforce Utilization Reports are to be submitted within 10 days of the end of each quarter by following the online reporting process set forth in section 15.02 (D). The *E.O. 162 Workforce Utilization Reports* will require the CONSTRUCTION MANAGER and its Subconsultants and Subcontractors to, among other things, report the gross wages paid to each of their employees for the Work performed by such employees on the Contract.

For monthly reporting in connection with Executive Order 162, reports are to be submitted electronically as follows:

1. 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.
2. Go to View>> My Workforce Audits.
3. View Workforce Audits by status, dates, contract, and contract type (Prime/Subcontractor).
4. The System will notify contractors to log in to review and record the workforce details for the applicable audit.

5. Complete all required reporting on a timely basis.

5) CONSTRUCTION MANAGER's Failure to Meet M/WBE Participation Goals

a. If the CONSTRUCTION MANAGER, after making good faith efforts, is unable to comply with a Contract's M/WBE participation goals, the CONSTRUCTION MANAGER may submit a request for a partial or total waiver on forms provided by the OWNER documenting good faith efforts by the CONSTRUCTION MANAGER to meet such goals. If the documentation required with the request for waiver is complete, the OWNER shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

b. If the OWNER, upon review of the CONSTRUCTION MANAGER's Utilization Plan and compliance reports, determines that the CONSTRUCTION MANAGER is failing or refusing to comply with the Contract's M/WBE participation goals, and no waiver has been issued in regards to such non-compliance, the OWNER may issue a notice of deficiency to the CONSTRUCTION MANAGER. The CONSTRUCTION MANAGER must respond to the notice to deficiency within seven days of receipt. Such response may include a request for partial or total waiver of M/WBE participation goals.

6) CONSTRUCTION MANAGER and OWNER Complaints; Arbitration

a. Subsequent to the award of this Contract, if the CONSTRUCTION MANAGER submits a request for waiver of M/WBE participation goals and the OWNER denies the request or fails to respond in any way within 20 days of receiving it, or if the CONSTRUCTION MANAGER has received a written determination from the OWNER that the CONSTRUCTION MANAGER is failing or refusing to comply with goals, the CONSTRUCTION MANAGER may file a complaint with the Director, Division of Minority and Women's Development in the Department of Economic Development ("Director"), according to the provisions of Section 316 of the Executive Law. The complaint must be filed within 20 days of the OWNER's receipt of the request for waiver, if the OWNER has not responded in that time, or within 20 days of a notification that the request has been denied by the OWNER or within 20 days of receipt of notification from the

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OWNER that the CONSTRUCTION MANAGER is failing or refusing to comply with goals.

b. If the CONSTRUCTION MANAGER fails or refuses to comply with goals for participation by M/WBEs as established by this Contract, the OWNER may file a complaint with the Director pursuant to Section 316 of the Executive Law.

c. A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.

d. The party filing a complaint, whether the CONSTRUCTION MANAGER or the OWNER, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.

e. Upon receipt of a complaint the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within 30 days of receipt of the complaint the Director is unable to resolve the complaint to the satisfaction of the OWNER and the CONSTRUCTION MANAGER, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.

f. Upon conclusion of the arbitration proceeding, the arbitrator will submit to the Director his or her award regarding the alleged violation of the Contract or refusal of the OWNER to grant a waiver request by the CONSTRUCTION MANAGER. The award of the arbitrator with respect to the alleged violation of the Contract or the refusal of the OWNER to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.

g. Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either (i) adopt the recommendation of the arbitrator; (ii) determine that no sanctions, fines or penalties should be imposed; or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty.

h. The Director, within ten days of receipt of the arbitrator's award and recommendations, will issue a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

i. The determination of the OWNER or the CONSTRUCTION MANAGER to proceed with a complaint shall not preclude the OWNER, in its discretion, from pursuing any other remedies which it may have pursuant to law and contract, including withholding from payments to the CONSTRUCTION MANAGER the

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estimated amount of the fines and penalties which may be imposed pursuant to subdivisions 6.g. and 6.h. of this paragraph. Said amounts shall be the difference between the planned dollar amount of MBE/WBE sub-contract awards and the actual dollar amount of such awards.

7) Subcontracts

The CONSTRUCTION MANAGER will include the provisions of paragraphs 3. and 6. above in every subcontract, in such manner that such provisions will be binding upon the Subconsultant as to work in connection with this Contract.

E. The following forms are to be used in submitting Affirmative Action Plans and are hereby made a part of the Contract:

1) Utilization Plan (AAP 1.0)
2) Six-Month Utilization Workforce Projection Schedule (EEO 4.0)
3) Compliance Report (AAP 7.0)
4) Request for Waiver (AE - AAP 8.0)
5) Good Faith Efforts Guidelines (AAP 9.0)

F. The CONSTRUCTION MANAGER agrees to fully comply and cooperate with DASNY's policy to promote New York State business and labor participation.

1. In the event this Contract is in the amount of one million dollars or more, the CONSTRUCTION MANAGER shall document their efforts to encourage the participation of New York State business enterprises as suppliers and subconsultants. Documented efforts by the CONSTRUCTION MANAGER shall consist of showing that such CONSTRUCTION MANAGER has (a) solicited bids or proposals, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned business, or (b) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or (c) placed notices for subconsultants and suppliers in newspapers, journals and other trade publications distributed in New York State, or (d) participated in subconsultant outreach conferences. If the CONSTRUCTION MANAGER determines that New York State business enterprises are not available to participate on such Contract as subconsultants or suppliers, the CONSTRUCTION MANAGER shall provide a Statement indicating the method by which such determination was made. If the CONSTRUCTION MANAGER does not intend to use subconsultants on such contract, the CONSTRUCTION MANAGER shall provide a Statement verifying such intent.

2. In the event this Contract is in the amount of one million dollars or more, the CONSTRUCTION MANAGER shall submit post award compliance reports documenting their efforts to notify New York State residents of employment opportunities arising in New York State out of such Contract by listing any such positions with the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

18. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE AND CONTINUING INTEGRITY

A. In order to assist DASNY 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

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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 Construction Manager 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 Construction Manager 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://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire. The Construction Manager 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 DASNY in making an award determination.

D. The Construction Manager shall at all times during the Contract term remain responsive and responsible. The Construction Manager shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term The Construction Manager 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 Construction Manager shall immediately notify Owner of any material or adverse information pertaining to the Construction Manager 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 Construction Manager. In the event of such suspension, the Construction Manager will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Construction Manager 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 Construction Manager, 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 Construction Manager's expense where the Construction Manager 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 Construction Manager 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 Construction Manager shall not Subcontract with any entity on the List of Employers Ineligible to Bid On Or Be Awarded Any Public Contract, published by

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the NYS Department of Labor Bureau of Public Work. The Construction Manager shall not Subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The Professional shall not Subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

H. In selecting a Subconsultant or Subcontractor, the Construction Manager 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 Construction Manager 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 Construction Manager, 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 Construction Manager 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.

19. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSTRUCTION MANAGERS

A. Officers and employees of DASNY 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 CONSTRUCTION MANAGER of or for DASNY authorized on behalf of DASNY 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 CONSTRUCTION MANAGER, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of DASNY under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

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

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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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER's bids or proposals for future contracts.

20. COOPERATION WITH INVESTIGATIONS

The CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the CONSTRUCTION MANAGER, relating to the CONSTRUCTION MANAGER. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Subcontractor, CONSTRUCTION MANAGER and

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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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER but not currently in the CONSTRUCTION MANAGER's physical possession. The CONSTRUCTION MANAGER shall not enter into any agreement with a Subcontractor, CONSTRUCTION MANAGER or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The CONSTRUCTION MANAGER shall assist the OPI or the Representative in obtaining access to past and present Subcontractor, CONSTRUCTION MANAGER 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, CONSTRUCTION MANAGERs and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

The CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, for purposes of the Contract.

The CONSTRUCTION MANAGER shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, CONSTRUCTION MANAGERs 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 CONSTRUCTION MANAGER shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision.

The CONSTRUCTION MANAGER shall not make any payments to a Subcontractor, CONSTRUCTION MANAGER or supplier from whom the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER.

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

21. 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.

22. INVALID PROVISIONS

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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.

23. 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.

24. GREEN AND CLEAN STATE BUILDINGS

A. The Professional shall, to the maximum extent practicable, follow guidelines for the construction of "Green Buildings", including guidelines set forth in Tax Law Section 19, which created the Green Buildings Tax Credit, and the United States Green Building Council's LEED (Leadership in Energy and Environmental Design) rating system, in all buildings subject to the requirements of New York State Executive Order 88, issued December 28, 2012.

B. The Professional shall be required to demonstrate compliance with the New York State Executive Order 88 requirement that new buildings achieve at least a twenty (20) percent improvement in energy efficiency performance relative to levels required by the State's Energy Conservation Construction Code, as amended. For substantial renovation of existing buildings, the buildings shall achieve at least a ten (10) percent improvement in energy performance.

C. The Professional shall incorporate energy-efficient criteria consistent with ENERGY STAR and any other energy efficiency levels as may be designated by the New York State Energy Research and Development Authority (NYSERDA) into all specifications developed for new construction and renovation.

D. The Professional shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the Professional in analyzing the design and providing recommendations to maximize energy efficiency and to promote the eligibility of the capital cost incentives included in NYSERDA's New Construction Program. Assistance shall include any requisite modeling and other requisite analysis.

25. 2005 PROCUREMENT LOBBYING LAW

A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of and agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

B. For any contract $15,000 or more each proposer shall submit, with its proposal, on the form provided herewith, *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139–j and § 139–k.* The information contained in *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139–j and § 139–k* will serve as an informational resource to aid the Owner in making an award determination.

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C. The Owner reserves the right to terminate this contract in the event it is found that the certification filed by the Professional in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its termination right, such termination constituting a termination for cause, by providing written notification to the Professional in accordance with the terms of Article 5.1 of this Contract – Termination for Cause.

26. NONCOMPLIANCE

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

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