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**").

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

WHEREAS, the CONSTRUCTION MANAGER has provided Pre-construction Phase Services during the Pre-construction Phase of the Project; and

WHEREAS, the OWNER now desires the CONSTRUCTION MANAGER to provide Construction Management Services for the Construction Phase of the Project, including the administration of the General Conditions Work;

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: CONSULTANTS

A. 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.

B. The CONSTRUCTION MANAGER shall require that any Subcontractor providing engineering services, required under the Scope of this Contract, provide a **Certificate of Authorization in New York** issued by the New

York State Department of Education. A copy of said Certificate shall be kept by the CONSTRUCTION MANAGER, and upon request furnished to the OWNER.

The CONSTRUCTION MANAGER may propose and engage Subcontractors, hereinafter referred to as Approved Design Subcontractors, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed Subcontractor and, in such event, the CONSTRUCTION MANAGER shall propose another Subcontractor for that portion of the required services. The CONSTRUCTION MANAGER shall be responsible to the OWNER for the timely and efficient completion of all services performed by said Approved Design Subcontractors.

Prior to execution of a contract between the CONSTRUCTION MANAGER and proposed Subcontractor, the CONSTRUCTION MANAGER shall submit a copy of the proposed Subcontractor agreement to the OWNER for approval. The OWNER shall not be liable for payment to the CONSTRUCTION MANAGER for any cost incurred under any Subcontractor agreements unless said approvals are obtained. The fees of any Subcontractors retained by the CONSTRUCTION MANAGER for services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1. The fees of any Subcontractors retained by the CONSTRUCTION MANAGER for services required under Article III shall be paid as outlined in Article V.A.3.

C. The CONSTRUCTION MANAGER shall pay its Subcontractors the full amount due to them from their proportionate share of each requisition for payment submitted by the CONSTRUCTION MANAGER and paid by the OWNER. The CONSTRUCTION MANAGER shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.

ARTICLE V: PROVISION FOR PAYMENT

A. Construction Phase - Including Supervision and Administration of General Conditions Work

For satisfactory performance of all Construction 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 employees of the CONSTRUCTION MANAGER, other than Principals, assigned to the Project. Actual Direct Salary, as used herein, shall not include allowances for insurances, 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. Pay rates for 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 Construction 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;

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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 of Fringe Benefit costs for Construction 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

If the CONSTRUCTION MANAGER at any time estimates that the total of Actual Direct Salary and Fringe Benefit costs may exceed the above total, it shall promptly notify the OWNER in writing giving full explanation for such increase. If the OWNER agrees that said increase is necessary and justified, this Contract shall be amended to reflect the increased amount. No liability shall accrue to the OWNER until such time as written approval and authorization for said increase has been given by the OWNER to the CONSTRUCTION MANAGER.

3. 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.

4. Fixed Fee will be paid in the amount of _____and 00/100 Dollars ($_____) which includes all home office overhead, Principal and/or Executive level involvement, and profit.

The Fixed Fee of ($_____) pursuant to Article V.A.4. shall be reimbursed in proportion to the percentage of completed and OWNER approved Construction work.

If construction is not completed at the time of the planned Completion Date, as provided for in Article XIX, the OWNER shall continue to pay Salaries and Fringes, to the completion of the work, and no additional Fee will be paid. However, if the OWNER agrees that it is through no fault of the CONSTRUCTION MANAGER that the Completion Date is not met and the OWNER must provide for additional Salaries the Fee will become renegotiable upon the additional Direct Salary only.

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

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.

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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 CONSTRUCTION MANAGER 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 VI: 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

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 VII: 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 VIII: 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 Construction 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.

SAMPLE

ARTICLE IX: 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 OWNER and 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 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 9-– 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 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.

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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.

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 2017, 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.

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iii. GSI-105.2 (February 2002 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 (July 2023 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 (December 2021, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.

ii. DB-155 (September 2016 or most current version) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.

iii. CE 200 (December 2008, or most current version) - 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 $50,000.00; 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 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

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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.

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

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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 $2,000,000.00 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 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.

SAMPLE

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.

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 X: 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 CONSTRUCTION MANAGER, 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 the interest of contractors and subcontractors in insured property during the course of construction at an insured location or within 1,000 feet thereof, to the extent of the OWNER's legal liability for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work.

ARTICLE XI: INSURANCE PROVIDED BY PRIME CONTRACTORS

SAMPLE

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

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

B. 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.

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

D. 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 XII: 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. Protection of Work and Property

1. The CONSTRUCTION MANAGER shall enforce the provisions of the construction contracts regarding the Contractor and Subcontractors obligation to guard the OWNER's property from injury or loss in connection with the Work, the Contractor's work, and adjacent property.

2. The CONSTRUCTION MANAGER shall make inspections as necessary in order to confirm that the Contractor shall be responsible for protecting the materials stored by the Contractor both on and off site. The CONSTRUCTION MANAGER shall report any loss, theft, burglary, vandalism, or damage of materials or installed work to the OWNER by telephone and "FAX" as soon as it is discovered. If vandalism, theft, or burglary are suspected as the cause of the loss, the CONSTRUCTION MANAGER shall notify site security personnel and the municipal police. The CONSTRUCTION MANAGER shall also ensure the protection of the place of the loss until released from protect by the OWNER or the OWNER's Representative. The CONSTRUCTION MANAGER shall ensure that no potential evidence relating to the loss is removed from the place of the loss. Failure of the CONSTRUCTION MANAGER to comply with all of the above shall result in the CONSTRUCTION MANAGER bearing full financial responsibility for any losses.

C. 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:

SAMPLE

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 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 judgement 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.

D. Protection of Lives and Health

1. The CONSTRUCTION MANAGER shall make daily observations of the safety practices of all Prime Contractors and Subcontractors work activities on the job site and check their compliance with municipal, state and federal safety requirements. If a safety violation is found, the

SAMPLE

CONSTRUCTION MANAGER shall give the Prime Contractor or Subcontractor immediate written notice of the deficiency, and require correction of the safety violation before work continues. If the Prime Contractor or Subcontractor does not correct the deficiency within three (3) hours of notice from the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER may require the Prime Contractor or Subcontractor to leave the job site or may authorize a separate Prime Contractor or Subcontractor to erect or provide the required safety structures, equipment, or procedures. All costs related to using a separate Prime Contractor or Subcontractor to provide safety structures, equipment, or procedures shall be paid by the Prime Contractor or Subcontractor that failed to comply in a timely manner to the CONSTRUCTION MANAGER's notice.

The CONSTRUCTION MANAGER shall conduct weekly safety meetings with all Prime Contractor's and their Subcontractor's to review compliance with the safety precautions and programs required by their respective contracts.

The CONSTRUCTION MANAGER shall provide a copy of all notices under this section to the OWNER's Risk Management Unit.

Any slow down or delay in work caused by actions under this section shall not be a valid basis for a delay or loss of income claim by the CONSTRUCTION MANAGER.

2. The CONSTRUCTION MANAGER shall ensure that the Prime Contractors and their Subcontractors on the project shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of Work under the Contract, and shall immediately notify the OWNER in writing of any injury which results in hospitalization or death. The CONSTRUCTION MANAGER shall require the Prime Contractor and their Subcontractors to provide to the OWNER a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any job related injury on the OWNER's job site. Further, a copy of the OSHA Log of Injury and Illness shall also be provided to the OWNER for any reporting period in which a job related injury or illness is recorded. The CONSTRUCTION MANAGER shall also provide a list of witnesses to the OWNER. The list shall at least include the full name, home address, occupation, and telephone number of each person who saw or has knowledge of the incident which caused the injury or illness.

3. The OWNER or OWNER's Representatives may inspect the job site at any time without notice to the CONSTRUCTION MANAGER. If the OWNER finds that the CONSTRUCTION MANAGER is not complying with sections A. through D., the OWNER may send written notice to the CONSTRUCTION MANAGER to correct any deficiency. If upon reinspection, the OWNER finds the deficiencies have not been corrected, the OWNER may let a separate contract to correct any deficiencies and charge back the cost of the separate Contract to the CONSTRUCTION MANAGER at a premium rate. The CONSTRUCTION MANAGER cannot pass these additional charges onto the OWNER. No action taken under this section shall be deemed as a basis for any delay claim or any other claim against the OWNER by the CONSTRUCTION MANAGER.

4. The CONSTRUCTION MANAGER shall preserve and safeguard the scene of any jobsite accident involving a ladder, scaffold, mobile machinery, equipment, safety railing, or uncovered floor opening, or any other accident where the injured person required emergency medical treatment. The CONSTRUCTION MANAGER shall "tape off" the area, and not allow any material object or property to be altered, changed, moved, or removed from the accident site. In addition to "taping off" the accident site, the CONSTRUCTION MANAGER shall telephone and "FAX" the OWNER's Project Manager and Risk Management Unit immediately, and post a person at the accident site to protect it. Safeguarding and protecting the accident site shall only be abandoned by the CONSTRUCTION MANAGER upon release by the OWNER or the OWNER's Representative. Failure of the CONSTRUCTION MANAGER to comply with the provisions of this paragraph shall be deemed a breach of this Contract.

SAMPLE

5. The CONSTRUCTION MANAGER shall prepare and deliver to the OWNER a site specific job safety and security program. Special emphasis must be given to access to emergency medical treatment, first aid, evacuation, and basic safety training including orientation of each worker on the specific inherent safety risks of the jobsite and specific training required by OSHA. The security element of the plan shall include special consideration for protection if the project is in a high crime area.

ARTICLE XIII: 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, 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 XIV: 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, including records of Subcontractors and suppliers. The OWNER or the OWNER's Representative shall have the right to inspect and audit all records and other data of the CONSTRUCTION MANAGER, Subcontractors, and material suppliers relating to the Project.

ARTICLE XV: APPENDIX "D" ADDITIONAL ITEMS

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

ARTICLE XVI: 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 XVII: 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 **Construction Phase Contract**, and all attached documents and appendices;
- the **General Conditions Phase Contract,** and all attached documents and appendices, incorporated herein by reference;
- 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.

SAMPLE

ARTICLE XVIII: 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. Construction Phase Contract
2. General Conditions Phase Contract
3. OWNER's Request for Proposal
4. CONSTRUCTION MANAGER's Response to the OWNER's Request for Proposal.

ARTICLE XIX: TIME OF COMPLETION

The planned Completion Date for the Construction Phase shall be _____, 20__, however, this Contract shall survive and remain in full force and effect until the Work of this Contract is completed.

ARTICLE XX – 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 18% MBE, 12% WBE and 6% SDVOB. The goals refer to the utilization of M/WBE and SDVOB sub-consultants on DASNY Professional Services Contracts. With each project assignment the firm will be required to submit a new plan with dollar amounts.

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

CONSTRUCTION PHASE

During the three phases of construction (construction of the new building, demolition of the existing building, and sitework), the CONSTRUCTION MANAGER shall perform the following services:

1. General Administration

    a. Designated as the OWNER's Representative on the Project Site and maintain liaison amongst the OWNER, the Design Professional, and all Contractors.

    b. Receive, investigate, and reply to all Contractors' correspondence pertaining to the Work. Take appropriate action as required and necessary.

    c. Coordinate with the appropriate parties the delivery and installation of OWNER supplied materials and or systems, as may be required.

    d. Supply the OWNER with a copy of all correspondence (if requested), reports, comments, transmittals, requests, and other information relating to the performance of Construction Management Services.

    e. Attend construction kickoff meeting(s).

    f. Attend all Construction/Subcontractors' meetings with Design-Build team and their respective design professionals.

    g. Attend all Owner meetings with Design-Build Team, Client & DASNY.

    h. Review and comment on Meeting minutes provided by the Design-Build Team.

    i. Evaluate the Construction Phase Schedule for conformance with industry standards, reasonableness of overall proposed schedule duration and methodology.

    j. Provide daily on-site observation and inspection throughout the construction duration for compliance with the basis of design and the construction documents. (See below for specific staffing details).

2. Shop Drawings and Samples

    a. Monitor the shop drawings review process that occurs between the Design Builder and the Bridging consultant.

    b. Notify the owner of any irregularities or concerns

3. Testing/Inspection

    a. Coordinate and monitor all testing and inspections being provided by the Owner.

    b. Monthly, provide the OWNER with a schedule of inspections to be performed during the coming month, including the scheduled date, type of test or inspection and test/inspection criteria or standards. Issue reports that include date, persons present and test/inspection criteria or standards.

SAMPLE

c. Comply with the requirements of the OWNER's independent safety inspection program. Facilitate scheduled and unannounced inspections and provide information to the independent safety inspectors as requested.

d. Manage/coordinate Owner contracted testing and inspection programs/consultants with D-B team.

4. Quality Control

a. Provide oversight of all construction activities to assure applicable code compliance, manufacturer's installation and overall construction industry standards are achieved. Responsible for ensuring compliance with the approved design documents.

b. Inspect all work daily for quality and conformance to the Contract Documents. Advise Contractor(s) of necessary corrective work. Inspect materials and equipment prior to installation for conformance to the specifications.

c. Prepare periodic "Exception Reports" as required by the Work of the Contractors. Distribute to the appropriate Contractor(s) for necessary corrective work. Maintain a log of the noted exception, date issued, and date corrected. Maintain a photographic record where life safety issues/systems are involved.

d. Inspect the Project jointly with the OWNER and Bridging Consultant prior to the time the OWNER is to use, occupy, or operate any part or the entire Project, and prepare a list of observed variances and deficiencies in the Work. Distribute the list to the appropriate Contractor(s) for necessary corrective work.

e. Prepare jointly with Bridging Consultant a "Final Punch List" for each Contract. Distribute to the appropriate Contractor(s) for necessary corrective action.

f. At the time of substantial completion, prepare a list of any remaining items of work to be completed or corrected. Distribute to the appropriate Contractor(s) for necessary work. Establish a value for each item of work remaining to be completed or corrected.

g. Make final inspection of the Project with OWNER/Bridging Consultant /Design-Build Contractor, using Contract Documents as a base to determine if the Contract requirements have been fulfilled. List any variances between Contract requirements and Work installed. Coordinate items which may appear on independent final lists prepared by the OWNER/ Bridging Consultant /Design-Build Contractor. Distribute to the appropriate Contractor(s) for necessary corrective action.

h. Follow up on all notices of corrective work to Contractor(s) to assure satisfactory and timely completion of the Work.

i. Assist in the implementation of the OWNER's Affirmative Action Program with regard to Equal Opportunities and Minority Business Enterprise participation.

5. Progressing the Work

a. Determine the cause of and responsibility for any delays. Recommend appropriate remedial action.

b. Be cognizant of potential delays and direct the Contractor(s) to take the necessary measures to eliminate circumstances which may lead to a delay.

c. Provide monthly progress reports during construction.

6. Payments to Design-Build Contractors

a. Progress Payments:

SAMPLE

i. Review and recommend for the OWNER's approval, the Contractor's detailed payment breakdown.

ii. Review each Design-Build Contractor's monthly invoices and recommend payment, no payment, or partial payment.

b. Final Payment:

i. Establish that all close-out procedures have been complied with.

ii. Make recommendations on final payment.

7. Change in the Work

a. Implement and enforce the OWNER's procedure for the processing of Change Orders.

b. Consult with the Bridging Consultant concerning proposed design changes and obtain the OWNER's approval for same.

c. Make recommendations to the OWNER for such changes in the Work as the CONSTRUCTION MANAGER may consider necessary or desirable.

d. Perform economic evaluation of all changes in the Work and evaluate the effect on other work.

e. Evaluate requests for extensions of time and make recommendations.

f. Maintain daily cost accounting records with respect to work performed on a time and materials basis.

g. Provide review assistance of change orders requested and submitted by Design-Build team.

h. Managing other data entry and generation of reports as requested by the OWNER.

8. Claims

a. Analyze and evaluate all claims for Contract time extension or cost adjustment. Make recommendations to the OWNER for resolution, approval, or disapproval.

9. Reports

Prepare and issue the following:

a. Daily reports in form acceptable to the OWNER.

b. Bi-weekly progress reports.

c. Other reports which are from time to time required by the OWNER.

10. Transition of Operations

The CONSTRUCTION MANAGER shall collaborate with the client regarding efforts needed to transition/move personnel, youths and equipment from the current existing building to the newly built facility. The CONSTRUCTION MANAGER will work with the client and contractor to determine the decommissioning of equipment which may require removal/disposal.

11. Close Out

SAMPLE

a. Establish that the following has been received from the Contractor(s) and forwarded expeditiously to the appropriate party:

   i. All necessary guarantees.
   ii. As-built drawings.
   iii. Operating and maintenance manuals.
   iv. Certificates of compliance, etc.
   v. All turnover items required by Contract.
   vi. Other items required by the Contract.

b. Maintain a log of receipts and turnovers, and transmittals.

c. Establish and document that all operating instructions have been given to the OWNER's personnel consistent with Contract requirements. Perform all necessary coordination.

d. Provide services during project close out similar to services provided under a standard CM contract.

e. Assist owner with creation, review and completion of final punch list.

12. Construction Progress Documentation

The CONSTRUCTION MANAGER shall provide comprehensive oversight and review services related to the establishment of a preliminary project schedule and needed to ensure that the project/construction schedules being provided by the Design-Builder represent a logical/workable plan for the successful completion of the project.

a. Provide a preliminary summary level project schedule – Working with the Bridging Consultant and Owner, develop a preliminary high level milestone project schedule which will reflect the timeline expectations for the delivery of services being provided by the Design-Builder. This schedule will be made a part of the RFP package covering the procurement of the Design-Build services being provided for the project.

b. Provide a review/analysis of schedules submitted by the Design-Builder throughout the project duration – A review/evaluation/analysis of baseline, monthly updates and recovery schedules submitted by Design-Builder shall be performed and formal comments provided.

   Baseline schedule analysis: The analysis of the Design-Builder's baseline schedule shall be made. This analysis shall include, but not be limited to, a review of the following:
   i. Duplicate activity Descriptions
   ii. Activities with excessive Original Durations (greater than 100 days)
   iii. Constraints with potential for interference with float calculations
   iv. Non-overlapping lags or unreasonable/long lags
   v. Review minimum float, percentage of activities on Critical Path, and average float
   vi. Preparation of Critical Path Summary with Milestone and Completion dates
   vii. Review narrative for conformance with schedule and DASNY specification
   viii. Review for conformance with DASNY scheduling specifications

   Update schedule analysis: Routine analysis of the Design-Builders' monthly progress schedules shall include, but not be limited to the following:
   i. Duplicate activity Descriptions
   ii. Activities with excessive Original Durations (greater than 160 days)
   iii. Constraints with potential for interference with float calculations
   iv. Non-overlapping lags or unreasonable/long lags
   v. Review minimum float, percentage of activities on Critical Path, and average float
   vi. Preparation of Critical Path Summary with Milestone and Completion dates

SAMPLE

vii. Review narrative for conformance with schedule and DASNY contract requirements
viii. Review overall schedule submittal for conformance with DASNY scheduling contractual requirements
ix. Verification that the Design-Builder maintains the same baseline dates for all updates unless a change is agreed to in writing by the PM and Higher-Level manager.
x. Document all delays, including their causes, responsible parties, and impacts on the critical path and provide to DASNY as a part of the Monthly update submissions and ad hoc as necessitated by DASNY.
xi. Enforcement of submission of a recovery schedule if work is more than 15 calendar days behind the approved CPM schedule
xii. Require resubmission of schedule if found to be manipulated i.e.: Baseline dates modified, Activity IDs reused, Open ends.

c) Project scheduling site visits – It is extremely important that schedule updates are reflective of the actual status of the project. Services that may be required to be provided include:
i. Verification of the accuracy of Design-Builder's schedule progress update data
ii. Meeting with the Design-Builder, and/or scheduling consultant retained by the Design Builder regarding scheduling matters. Interceding in the Owner's behalf in matters concerning the quality of baseline schedules, recovery schedules, and/or scheduling practices in general.
iii. Interceding on the Owner's behalf in matters concerning the quality of baseline schedules, recovery schedules, and/or scheduling practices in general
iv. Conducting on-site inspections to verify reported progress
v. Documenting any discrepancies between reported and actual progress

d) Review of contractor/consultant Recovery Schedule and/or Remedial Action Plan. Services may include:
i. Analysis of any schedule adjustments, relative to both baseline and previous update
ii. Project Date Analysis, comparing Milestone and Completion dates relative to baseline and previous update
iii. Evaluation of constraints with potential for interference with float calculations
iv. Preparation of Critical Path Summary
v. Review narrative for conformance with schedule and DASNY specification
vi. Assess feasibility of recovery plans, including proposed changes to working hours, crew sizes, or resource allocations
vii. Ensure recovery schedules align with DASNY's objectives

e) Project scheduling assistance. Services may include meeting with the project team or site visit(s), along with the following:
i. Maintenance of program Master Schedule to monitor Design-Builder's performance
ii. Review of Design-Builder's As-planned Construction Schedule
iii. Review of Design-Builder's Bid Milestone Schedule
iv. Review of Design-Builder's Preliminary Baseline Schedule
v. Monitoring Design-Builder's maintenance and periodic updating of Construction Progress Schedule
vi. Verification of proper incorporation of Change Orders and/or delay issues into schedule
vii. Review of schedule narrative submissions
viii. Identification of potential scheduling risks and evaluate Design-Builder's proposed mitigation strategies
ix. Maintenance of a risk register documenting potential scheduling impacts, mitigation strategies, responsible parties and status

f) Additional Services and Protections. To safeguard DASNY's interests, the CM may be required to provide the following additional services:

Change Order Integration
i. Review Design-Builder's incorporation of all approved change orders into the CPM schedule

SAMPLE

ii. Analyze their impact on critical path activities and overall project completion
iii. Provide recommendations to DASNY on minimizing disruptions caused by change orders

Claims Avoidance Support

i. Proactively identify and document potential claims related to scheduling delays or disruptions
ii. Maintain detailed records of schedule adjustments, including justifications, to protect DASNY against unwarranted claims
iii. Act as an intermediary in resolving scheduling conflicts between the Design-Builder and stakeholders

Documentation Requirements

i. Ensure Design-Builder submits schedules in both PDF format, .XML and native software format (Primavera P6 / .XER)
ii. Verify inclusion of activity ID numbers, descriptions, durations, start/finish dates, total float values, and logic relationships
iii. Confirm use of Precedence Diagram Method (PDM) for sequencing activities
iv. Ensure all activities are logically connected with no open-ended tasks
v. Treat float as a shared resource between DASNY and contractors
vi. Prohibit float suppression techniques such as preferential sequencing or artificial constraints. Review the Design-Builder complies with all scheduling related requirements outlined in DASNY General Requirements.

Quality Assurance

i. Conduct a prescheduling conference at the project site to review procedures
ii. Retain authority to reject schedules that fail to meet DASNY standards or contractual obligations

13. Project Management System

a. The Construction Manager shall use the OWNER's current version of Primavera Contract Manager ™ (Contract Manager) or PMWeb®, 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.

b. The OWNER may direct the Construction Manager to provide all the Primavera Contract Manager ™ or PMWeb®, functions of Paragraph A of this Article from available web-based and/or Application Service Provider (ASP) system(s) as selected by the OWNER.

SAMPLE

APPENDIX "B"

SCHEDULE OF APPROVED PERSONNEL CLASSIFICATIONS AND MAXIMUM DIRECT SALARY RATES

CLASSIFICATIONS	APPROVED MAXIMUM DIRECT HOURLY RATES (*)
Project Manager	_____
Project Engineer	_____
General Superintendent	_____
Assistant Superintendent	_____
Assistant Superintendent	_____
Mechanical Engineer	_____
Project Accountant	_____
Office Engineer/Trainee	_____
Plan Clerk	_____
Secretary	_____

Initial listed classifications are typical. Actual Project staffing will depend on the specific needs for each individual project and be reflected in the final Contract.

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.

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

APPENDIX "C"

SUMMARY OF PAYMENTS

A. CONSTRUCTION PHASE

1.	Actual Direct Salaries	$,			
2.	Fringe Benefits	,			
3.	Consultant's Costs	,			
4.	Fixed Fee	,			
5.	MAXIMUM AMOUNT PAYABLE		$,		NTE

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

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.

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. <u>NONDISCRIMINATION</u>

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 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 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 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.

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 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.

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 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.

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

B. When directed by the OWNER, prior to the award of any Contract valued at $10,000 or more, the 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 the OWNER 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 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 the OWNER are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, Consultant, attorney, engineer, inspector or CONSTRUCTION MANAGER of or for the OWNER authorized on behalf of the OWNER to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

B. Section 73(5) of the *Public Officers Law* expressly prohibits the CONSTRUCTION MANAGER, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the OWNER under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties, could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

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

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 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

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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the CONSTRUCTION MANAGER 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.

C. The OWNER reserves the right to terminate this contract in the event it is found that the certification filed by the CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER 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.**