

CONTRACT

A Contract is hereby made by and between the Dormitory Authority of the State of New York (“**DASNY**”), having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964, hereinafter referred to as DASNY and Inc. whose office is located at _____ hereinafter referred to as the CONSULTANT.

WHEREAS, DASNY has solicited Bids for Recruiting and Headhunter Services as set forth in the Invitation for Bid dated _____ (the “**IFB**”);

WHEREAS, the CONSULTANT submitted a proposal in response to the IFB (the “**Proposal**”)

WHEREAS, pursuant to the IFB process, the CONSULTANT was selected to provide the Recruiting and Headhunter Services;

WHEREAS, DASNY has requested the CONSULTANT and the CONSULTANT has agreed to provide Recruiting and Headhunter Services;

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

ARTICLE I: CONSULTANT’S SERVICES

The CONSULTANT has agreed to provide Recruiting and Headhunter Services of the type and nature set forth in the Bid, the Bid Response and as required by **Attachment "B"**, entitled **SCOPE OF SERVICES**, which is attached to and made a part hereof.

ARTICLE II: TERM

The term of this Contract shall commence on and shall expire on (the “Term”). The Term may be extended by mutual agreement of the parties. DASNY may terminate this Contract prior to the expiration of the Term upon 30 days prior written notice to the CONSULTANT.

ARTICLE III: FEE/PAYMENT SCHEDULE – Recruiting and Headhunter SERVICES

The Payment/Fee Schedule – Consulting Services, as described in the Bid Breakdown & Schedule is set forth as **Attachment “A”**, attached hereto.

ARTICLE IV: INSURANCE

A. The CONSULTANT shall purchase at its own expense and maintain throughout the Term, from a company or companies licensed or authorized to do business in New York State, or otherwise acceptable to DASNY, insurance policies containing the following types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The CONSULTANT shall not provide services under this Contract until the CONSULTANT has obtained all the insurance required under this Article:

(i) Workers' Compensation Law Requirements

(a) Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of one million Dollars (\$1,000,000) as evidenced by **ONE** of the following (**ACORD certificates are not acceptable**):

- (1) C-105.2 (September 2007, or most current version) - Certificate of Workers Compensation Insurance. The insurance carrier will provide a completed form as evidence of in-force coverage.
- (2) U-26.3-Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund will provide a completed form as evidence of in-force coverage.
- (3) GSI-105.2/SI-12-Certificate of Workers Compensation Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator will provide a completed form.

(b) Disability Benefits

- (1) DB-120.1 (May 2006, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law. The insurance carrier will provide a completed form as evidence of in-force coverage.
- (2) DB-155-Certificate of Disability Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.
- (3) CE-200-Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. DASNY will *not* accept this as an exemption from providing Workers' Compensation Insurance.) The Certificate may be

obtained from the NYS Workers Compensation Board's website at www.wcb.state.ny.us/content/main/forms.htm. The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contracts.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

- (ii) Commercial General Liability which names DASNY, and the State of New York as listed in Appendix "D", entitled **ADDITIONAL INSUREDS**, of this Contract for CONSULTANT Services with per-occurrence and aggregate limits of not less than two million Dollars (\$2,000,000.00). The CONSULTANT shall list any deductible or SIR and provide a copy of the endorsement.

Coverage shall include Blanket Contractual liability covering all indemnity agreements, including all indemnity obligations contained in this Contract, and Products Liability and Completed Operations Aggregate limit of \$4,000,000 per occurrence and aggregate for a term of no less than three (3) years.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Policy or policies must be written or endorsed to be primary and non-contributory as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by DASNY. Any other insurance maintained by DASNY shall be excess of and shall not contribute with the CONSULTANT's or its subconsultant's or subcontractor's insurance, regardless of the "other insurance" clause contained in DASNY's own policy of insurance.

- (iii) Commercial Comprehensive Automobile Liability and Property Damage covering all owned, leased, hired and non-owned vehicles used in connection with the Work with combined single limits of not less than one million Dollars (\$1,000,000.00) each person/each accident for bodily injury and property damage.

Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability.

- (iv) Technical Errors and Omissions/Professional Liability Insurance and Cyber Risk Insurance with a limit of not less than One Million Dollars (\$1,000,000) and subject to a deductible, or self-insured retention, of not more than One Hundred Thousand Dollars (\$100,000.00) per claim. Such policy(ies) shall include the Dormitory Authority – State of New York as Additional Insured with respect to claims brought by third parties in connection with work performed by the Proposer. Such policy(ies) shall also remove any

exclusion that restricts or eliminates coverage for claims brought by DASNY against the Proposer that would otherwise be covered by the policy. The cyber risk policy shall provide coverage for any incremental costs incurred by DASNY to investigate and remediate any data breach that may have exposed DASNY's data. The policy should provide third party coverage for both DASNY and our clients.

- B. Prior to award of Contract, two Certificates of Insurance must be submitted and approved by DASNY prior to the commencement of the Term. It is further agreed that if the insurance policy's term stated on the certificate expires, it is the responsibility of the CONSULTANT to provide an updated certificate of insurance to Contracts Unit 30 days prior to expiration of the insurance. Certificates shall provide 30 days written notice to DASNY prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. Upon request, the CONSULTANT shall furnish DASNY with certified copies of each policy. Certificates are to be forwarded to:

Purchasing Unit
DASNY
515 Broadway
Albany, New York 12207-2964

Certificate(s) of Insurance, when submitted to DASNY, constitute a warranty by the CONSULTANT that the insurance coverage described is in effect for the policy term shown and will provide insurance for the life of the Contract Term.

Should the CONSULTANT engage a subconsultant or subcontractor, the same conditions as are applicable to the CONSULTANT under these insurance requirements shall apply to each subconsultant or subcontractor of every tier.

- C. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company or meet such other requirements as are acceptable to DASNY.
- D. Should the CONSULTANT fail to provide or maintain any insurance required by this contract, DASNY may, after providing written notice to the CONSULTANT, purchase insurance complying with the requirements of this Article and charge back such purchase to the CONSULTANT.
- E. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CONSULTANT shall immediately notify DASNY.
- F. Notwithstanding any other provision in this Article, DASNY may require the CONSULTANT to provide, at the expense of DASNY, any other form or limit of insurance necessary to secure the interests of DASNY.
- G. Neither the procurement nor the maintenance of any type of insurance by DASNY, the CONSULTANT, its subconsultants, or subcontractors shall in any way be

construed or deemed to limit, discharge, waive or release the CONSULTANT from any of the obligations or risks accepted by the CONSULTANT or to be a limitation on the nature or extent of said obligations and risks of the CONSULTANT.

- H. This Contract may, at the sole option of DASNY, be declared void and of no effect if the CONSULTANT or any subcontractor or subconsultant fails to comply with the provisions of this Article.
- I. The CONSULTANT and its subconsultants or subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of DASNY and of the insurance companies issuing such policies.

ARTICLE V: HOLD HARMLESS

The CONSULTANT hereby agrees to indemnify and hold harmless DASNY or DASNY's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CONSULTANT 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 DASNY, or DASNY's members, officers, employees, or representatives, DASNY agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which DASNY is responsible, and DASNY agrees to pay the CONSULTANT the percentage of defense costs which the CONSULTANT incurred based upon an apportionment of DASNY's allocated responsibility.

ARTICLE V: DASNY'S RIGHT TO AUDIT AND INSPECT RECORDS

The CONSULTANT shall maintain and shall keep for a period of six years after the date of expiration of the Term, all records and other data relating to Consulting Services provided under this Contract. DASNY shall have the right to inspect and audit such records.

ARTICLE VI – CONTINUING INTEGRITY

The CONSULTANT shall at all times during the Contract Term remain responsive and responsible. The CONSULTANT shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract Term. The CONSULTANT agrees, if requested by the President of DASNY or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The CONSULTANT shall immediately notify DASNY of any material or adverse information pertaining to the CONSULTANT or any subconsultant, regardless of tier.

The President of DASNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers

information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONSULTANT Services may resume at such time as the President of DASNY or his or her designee issues a written notice authorizing a resumption of performance under this Contract.

Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate DASNY officials or staff, the Contract may be terminated by the President of DASNY or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of DASNY or his or her designee to be non-responsible. In such event, the President of DASNY or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

In selecting a subcontractor, the CONSULTANT shall consider whether the proposed subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The CONSULTANT shall not subcontract with any entity on the "List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract", published by the NYS Department of Labor Bureau of Public Work. The CONSULTANT shall not subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The CONSULTANT shall not subcontract with any entity on the list of "Non-Responsible Entities" maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

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

IN WITNESS WHEREOF, DASNY and the CONSULTANT have executed this Contract on the _____ day of _____ 20__.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK
515 Broadway
Albany, NY 12207-2964

By _____

Title _____

Date _____

CONSULTANT

By _____

Title _____

Date _____

ACKNOWLEDGMENT OF DASNY OFFICER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the _____ day of _____ in the year 2024, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____, DASNY, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of said corporation.

Notary Public

ACKNOWLEDGMENT OF CONSULTANT

STATE OF _____)
COUNTY OF _____) ss:

On the _____ day of _____ in the year 2024, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____, DASNY, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of said corporation.

Notary Public

**ATTACHMENT A
PAYMENT SCHEDULE**

Services/Deliverables	Fee (Percentage)*
Recruiting/Headhunter Services:	

*Fee Percentage Based on Annual Salary

1. All reimbursable expenses must be approved in advance by DASNY. Payment for approved Reimbursable Expenses shall be made monthly on the basis of invoices submitted by the CONSULTANT. Reimbursable Expenses of the CONSULTANT must be supported by acceptable detailed receipts and documentation.

2. One-third of the CONSULTANT's fee will be paid when all of the following conditions are met:
 A. the CONSULTANT provides DASNY with a candidate and DASNY offers the candidate the position;
 B. the candidate passes a background check of DASNY;
 C. the candidate accepts DASNY's offer; and
 D. the candidate begins employment with DASNY (the 'hire date').

3. One-third of the CONSULTANT's fee will be paid one (1) month after the employee's hire date, providing that the employee is still employed by DASNY.

4. One-third of the CONSULTANT's fee shall be paid six (6) months after the employee's hire date, providing that the employee is still employed by DASNY.

5. The CONSULTANT's fee shall be adjusted in accordance with the Employee's final agreed upon Annual Salary.

Regardless of the method of compensation, the Consultant shall be required to provide DASNY with a written statement showing the name of each individual who worked on the matter, the title of such individual, the date and hours devoted by such individual to the project, together with a brief description of the services provided by the individual on such date.

CONSULTANT agrees to submit invoices in the form and content required by DASNY, at no additional charge, including without limitation electronic submission in accordance with any new software and/or electronic invoice submission process or platform now or hereafter implemented by DASNY. All invoices (electronic or otherwise) must be submitted within 30 days of the end of the applicable billing cycle, which shall be monthly (unless otherwise agreed to in writing).

ATTACHMENT B
Scope of Services

Provide services to search for professional, technical and/or management level positions in Construction Management and Engineering. Recruitment assignments may include Construction Project Engineers, Architects, Design Managers, Project Managers, and related professional and technical construction management positions.

Recruiter services shall include: advertising of positions, screening of applicants, identification of diverse talents possessing the requisite qualifications while exemplifying and communicating DASNY's Office of Diversity and Inclusion mission statement, completion of a thorough and in-depth background check or content for DASNY to perform the background check through a third party which shall include, but is not limited to: employment and salary history, educational and/or professional credentials including verification of U.S. equivalencies, driver's license, criminal offense conviction record, professional/business references, and social security number. Only candidates authorized to work in the United States may be referred.

APPENDIX "C"

ADDITIONAL ITEMS

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1. **LABOR LAW PROVISIONS**

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

may be in addition to the percentages to be retained by the OWNER pursuant to other provisions of this Contract.

- F. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law this Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
 - 1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or
 - 2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.

- G. The CONSULTANT specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:
 - 1) in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no CONSULTANT, nor any person acting on behalf of said CONSULTANT or subconsultant, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - 2) no CONSULTANT, nor any person on behalf of said CONSULTANT or subconsultant shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;
 - 3) there may be deducted from the amount payable to the CONSULTANT, by the OWNER under this Contract, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Contract; and
 - 4) this Contract may be canceled or terminated by the OWNER and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.

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

2. **NONDISCRIMINATION**

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

- A. The CONSULTANT will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.

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

CONSULTANT, and an opportunity has been afforded the CONSULTANT to be heard publicly in accordance with the Executive Law. Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

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

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

5. CONTRACT DEEMED EXECUTORY

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

6. OWNERSHIP OF DOCUMENTS

N/A.

7. TERMINATION OR SUSPENSION

A. Termination for Cause

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

then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph B of this Article.

B. Termination for Convenience or Suspension of Project

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

C. Payment In Case Of Termination or Suspension of Project

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

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

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

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

8. SUSPENSION OR ALTERATION

A. The OWNER may order the CONSULTANT in writing to suspend, delay, or interrupt performance of all or any part or the Work for a reasonable period of time as the OWNER may determine. The order shall contain the reason or reasons for issuance.

B. Upon receipt of a suspension order, the CONSULTANT shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.

- C. The CONSULTANT specifically agrees that such suspension, interruption, or delay of the performance of the Work pursuant to this Item shall not increase the cost of performance of the Work of this Contract.
- D. Time of Completion of the Work may be extended to such time as the OWNER determines shall compensate for the time lost by the suspension, interruption, or delay, such determination to be set forth in writing.

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

N/A.

11. GOVERNMENT PROVISIONS

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

12. COOPERATION

N/A.

13. LATE PAYMENT

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

14. DEATH OF THE CONSULTANT

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

15. OWNER-CONSULTANT RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

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

17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE

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

B. When directed by the OWNER, prior to the award of any Contract valued at \$10,000 or more, the CONSULTANT shall, within ten days following either oral or written notice that it must comply, submit evidence of a duly executed NYS Vendor Responsibility Questionnaire (VRQ) to the OWNER.

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

C. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the OWNER in making an award determination.

D. The CONSULTANT shall at all times during the Contract term remain responsive and responsible. The CONSULTANT shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term. The CONSULTANT agrees, if requested by the President of the OWNER or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The CONSULTANT shall immediately notify OWNER of

any material or adverse information pertaining to the CONSULTANT or any Subconsultant, regardless of tier.

- E. The President of the OWNER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of the OWNER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- F. Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, the Contract may be terminated by the President of the OWNER or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of the OWNER or his or her designee to be non-responsible. In such event, the President of the OWNER or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.
- G. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall consider whether the proposed Subconsultant or Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The CONSULTANT shall not Subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The CONSULTANT shall not Subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The CONSULTANT shall not Subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192.
- H. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall also consider whether the proposed Subconsultant or Subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Work on the Project.
- I. Prior to award of a Contract, the CONSULTANT shall require any Subconsultant or Subcontractor, with a subcontract value of two million dollars (\$2,000,000) or greater, to submit to the OWNER a certified NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for review. At any time during the term of the Contract, the OWNER may request, and the CONSULTANT, Subconsultant or Subcontractor shall provide, a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for any Subcontractor performing Work on the Project for review. Additionally, the OWNER or CONSULTANT may require a Subconsultant or Subcontractor to update, recertify and resubmit a previously submitted NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) to the OWNER upon request. Refer to General Conditions Article 19 – Executive Order No. 125.

18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS

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

In addition to the prohibition of Section 73 (5) of the Public Officers Law, DASNY has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the CONSULTANT and its agents should refrain from offering or giving anything of value to an employee of the OWNER. Employees of the OWNER may not solicit any gift, gratuity, stipend or thing of value from the CONSULTANT or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.

- C. To promote a working relationship with the OWNER based on ethical business practices, the CONSULTANT is expected to:
- 1) furnish all goods, materials and services to the OWNER as contractually required and specified,
 - 2) submit complete and accurate reports to the OWNER and its agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from the OWNER or its agents that provides an unfair advantage over a competitor,
 - 4) not engage in any activity or course of conduct that restricts open and fair competition on OWNER-related projects and transactions,
 - 5) not engage in any course of conduct with OWNER employees or its agents that constitutes a conflict of interest, in fact or in appearance, and

- 6) not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The OWNER encourages the CONSULTANT to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the CONSULTANT may employ relatives of OWNER employees, the OWNER must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The OWNER reserves the right to request that the CONSULTANT modify the work assignment of a relative of an OWNER employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The CONSULTANT may hire former employees of the OWNER. However, as a general rule, former employees of the OWNER may neither appear nor practice before the OWNER, nor receive compensation for services rendered on a matter before the OWNER, for a period of *two years* following their separation from service with the OWNER. In addition, former employees of the OWNER are subject to a “*lifetime bar*” from appearing before the OWNER or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the OWNER.
- G. The CONSULTANT agrees to notify the OWNER’s Office of Professional Integrity at 518-257-3378 of any activity by an employee of the OWNER that is inconsistent with the contents of this Section.
- H. Any violation of these provisions shall justify termination of this Contract and may result in OWNER’s rejection of the CONSULTANT’s bids or proposals for future contracts.

19. COOPERATION WITH INVESTIGATIONS

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

The CONSULTANT shall grant the OPI or the Representative the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the CONSULTANT, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the CONSULTANT, relating to the CONSULTANT. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. At the OPI’s or the Representative’s request, said materials shall be provided in a computer readable format, where available. At the request of the OPI or the Representative, the CONSULTANT shall execute such documents, if any, as are necessary to give

the OPI or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the CONSULTANT but not currently in the CONSULTANT's physical possession. The CONSULTANT shall not enter into any agreement with a Consultant or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the OWNER. The CONSULTANT shall assist the OPI or the Representative in obtaining access to past and present Consultant and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

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

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

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

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

20. FALSE STATEMENTS/INFORMATION

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

21. INVALID PROVISIONS

If any term or provision of the Contract or the application thereof to any person, firm or corporation, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract, or the application of such terms or provisions to persons, firms or corporations, or circumstances

other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract shall be valid and be enforced to the fullest extent permitted by law.

22. CONFLICTING TERMS

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

23. 2005 PROCUREMENT LOBBYING LAW

- A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of an agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.
- B. For any contract \$15,000 or more each proposer shall submit, with its proposal, on the form provided herewith, *SFL 139 Form 1: CONSULTANT's Certifications Pursuant to SFL § 139-j and § 139-k*. The information contained in *SFL 139 Form 1: CONSULTANT's Certifications Pursuant to SFL § 139-j and § 139-k* will serve as an informational resource to aid the OWNER in making an award determination.
- C. The OWNER reserves the right to terminate this Contract in the event it is found that the certification filed by the CONSULTANT in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the OWNER may exercise its termination right, such termination constituting a termination for cause, by providing written notification to the CONSULTANT in accordance with the terms of Article 7(A) of this Contract – Termination for Cause.

24. NONCOMPLIANCE

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