

CONTRACT

A Contract, dated as of April 18, 2024, 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 [**Name of Consultant**] whose office is located at [**Address**] (the “**CONSULTANT**”).

WHEREAS, the OWNER has requested the CONSULTANT to provide Materials Testing and Special Inspections Services to support the OWNER during the design and construction phases for a new New York State Life Sciences Public Health Laboratory to be located at The Governor Averell Harriman State Office Building Complex in Albany, New York hereinafter referred to as the Project; and

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

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

ARTICLE I: CONSULTANT'S SERVICES

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

ARTICLE II: ADDITIONAL SERVICES

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

ARTICLE III: EXTRA WORK

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

ARTICLE IV: CONSULTANTS

A. The OWNER may retain a sub-consultant(s) to furnish services throughout the term of this Contract, and the CONSULTANT shall cooperate with said sub-consultant(s).

B. The CONSULTANT may propose and engage sub-consultants, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed sub-consultant, and, in such event, the CONSULTANT shall propose another sub-consultant for that portion of the required Services. The CONSULTANT shall be responsible to the OWNER for the timely and efficient completion of all Services performed by said sub-consultant. The fees of any sub-consultants retained

by the CONSULTANT for Services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1. The fees of any sub-consultants retained by the CONSULTANT for services required under Article IV and shall be paid as outlined in Article V.B.

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

ARTICLE V: PROVISION FOR PAYMENT

MAXIMUM AMOUNT PAYABLE

The OWNER agrees to pay, and the CONSULTANT agrees to accept, as full compensation for all Services pursuant to this Contract, the not to exceed amount of _____ and 00/100 Dollars (\$0.00). Appendix “B”, 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.

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

The OWNER may, at its sole discretion deny payment to the CONSULTANT for: 1) failure to invoice for services within 30 days of the services being rendered, 2) invoices provided without proper back-up documentation as defined in the contract.

A. CONSULTANT'S SERVICES

1. Original Scope of Services

The OWNER shall pay, and the CONSULTANT agrees to accept, as compensation for the original scope of services pursuant to Appendix “A”, entitled **SCOPE OF SERVICES**, the not to exceed amount of _____ and 00/100 Dollars (\$0.00). Compensation, at the completion of all work provided in the Scope of Services, shall be paid in accordance with the following schedule:

<u>Original Scope of Services</u>	
<u>1. Design Phase</u>	
<u>2. Construction Phase</u>	

2. Meals	<u>NYC Rate*</u>	<u>Upstate Rate</u>
Breakfast	\$ 6.00	\$ 5.00
Lunch	10.00	7.00
Dinner	43.00	31.00
Overnight Incidentals	3.00	2.00
Maximum Per Diem	62.00	45.00

*Also applies to Nassau, Suffolk, Rockland, and Westchester Counties and out-of-state travel.

	<u>Departure**</u>	<u>Arrival**</u>
Breakfast	Before 7:00 AM	After 8:00 AM
Lunch	Before 11:30 AM	After 2:00 PM
Dinner	Before 6:00 PM	After 7:00 PM

** Departure or Arrival predicated on residence.

3. Lodging per receipt up to the maximum United States Government Services Administration allowable lodging rates for the New York metropolitan and upstate New York areas in effect when the travel occurs (see www.gsa.gov).

- B. Fees paid to authorities having jurisdiction over the Project;
- C. Reproductions, postage, and handling of drawings, specifications, and other documents for the interim submissions (for OWNER's review and approval provide complete sets of documents, as requested by the OWNER, at the completion of all Phases of the Project. [Pre-Schematic, Schematic, Design Development, Bid Documents and 100% Construction Documents], EXCLUSION: reproductions for the office use of the CONSULTANT and its sub-consultants;
- D. Overtime work requiring higher than regular rates when authorized in advance by the OWNER;
- E. Expense of renderings or models for the OWNER's use; and

ARTICLE VII: WITHHOLDING OF PAYMENTS

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

- 1. to assure payment of just claims of any 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, or other such entities included in Appendix "D" as Additional Insureds from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of others caused by the act or neglect of the CONSULTANT or subconsultant; or
- 4. to assure payment of fines and penalties which may be imposed on the CONSULTANT pursuant to the provisions of this Contract.

VIII: FINAL PAYMENT AND RELEASE

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

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

ARTICLE IX: OWNER'S PROCEDURE

The CONSULTANT agrees to comply with all procedural requirements of the OWNER reasonably inferable from the Scope of Services and Scope of Work

ARTICLE X: INSURANCE

A. General Provisions

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

insurance policy, the OWNER may require the CONSULTANT or any Sub-consultant to provide proof, acceptable to the OWNER in its sole discretion, that the CONSULTANT or Sub-consultant has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the CONSULTANT or Sub-consultant may be liable under the claims pending or reasonably possible against the CONSULTANT or Sub-consultant at the time the OWNER requires the proof. A failure of the CONSULTANT or Sub-consultant to provide such proof is a failure of the CONSULTANT or Sub-consultant to maintain the insurance required by the Contract for Professional Services or to provide the OWNER with evidence of valid and in-force insurance coverage required by the Contract for Professional Services.

- (viii). All insurance policies required to be procured and maintained by the CONSULTANT and Sub-consultants under this Contract for Professional Services shall include a provision or endorsement that there shall be no right of subrogation against the OWNER, Client(s), or Construction Manager. If any of the CONSULTANT policies or any of the policies of any Sub-consultant prohibit such a waiver of subrogation, the CONSULTANT or Sub-consultant 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.
- (ix). Each liability and protective liability insurance policy required to be procured and maintained by the CONSULTANT and Sub-consultants under this Contract for Professional Services shall include a provision or endorsement that the coverage afforded the OWNER, Client(s) and Construction Manager (if applicable) under such policy shall be primary and non-contributory and that such policy shall be primary to any other insurance policy maintained by the OWNER, by the Client(s) or by the Construction Manager (if applicable). Any other insurance policy maintained by the OWNER, by the Client(s) or by the Construction Manager (if applicable) shall be in excess of and shall not contribute with the CONSULTANT or Sub-consultant's insurance policy, regardless of the "other insurance" clause contained in the OWNER's, Client(s)'s or Construction Manager's (if applicable) own policy of insurance or the CONSULTANT or Sub-consultant's insurance policies.
- (x). Any CONSULTANT Contract Documents, including but not limited to the Request for Proposal, but excluding Change Orders, may require any of the CONSULTANT and Sub-consultants 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).
- (xi). Notwithstanding any other provision of the Contract for CONSULTANT Services, the OWNER, in a Change Order or Contract Amendment, may require the CONSULTANT and any or all Sub-consultants to provide, at the expense of the OWNER, any other form or limit of insurance in addition to the insurance requirements of the original Contract for Professional Services necessary to secure the interests of the OWNER, Client(s), or Construction Manager (if applicable).
- (xii). Neither the procurement nor the maintenance of any type of insurance by the OWNER, the Client(s), the CONSULTANT or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the CONSULTANT or any Sub-consultant from any of the obligations or risks accepted by the CONSULTANT and Sub-consultants or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the OWNER, Client(s) and Construction Manager.
- (xiii). All provisions of General Terms and Conditions Article X: Insurance are to the fullest extent permitted by law. One purpose of this Contract for CONSULTANT Services is to allocate, to the fullest extent permitted by law, all risk of loss to the CONSULTANT, each Sub-consultant, and the insurers of each. Each insurance company from which OWNER or Client(s) has directly purchased an insurance policy is a third-party beneficiary of the

CONSULTANT and each Sub-consultant's obligations to procure insurance.

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

B. Submission of Insurance

- (i). OWNER will not execute the Contract for Professional Services unless the CONSULTANT shall submit to the OWNER or the OWNER's designee proof of insurance in such forms as requested and deemed acceptable by the OWNER, indicating the Project, and showing evidence of all insurance required under the Contract for CONSULTANT Services. Upon the OWNER's request, the CONSULTANT shall provide a copy of each insurance policy required by the Contract for Professional Services certified by the insurance carrier as a true and complete copy. The OWNER may request such a certified copy of a policy at any time and may make such requests as often as the OWNER, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies. In addition, the CONSULTANT shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER, constitute a warranty by the CONSULTANT and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- (ii). The CONSULTANT shall submit to the OWNER or OWNER's designee insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and Construction Manager (if applicable), and such other documents requested by the OWNER as proof of insurance for the CONSULTANT. All insurance submittals must be approved by the OWNER or the OWNER's designee prior to the CONSULTANT's commencement of work.
- (iii). Upon the OWNER's request, the CONSULTANT shall submit to the OWNER or OWNER's designee proof of insurance for one or more Sub-consultants, in such forms as requested and deemed acceptable by the OWNER, indicating the Project, and showing evidence of all insurance required under the Contract for Professional Services. Upon the OWNER's request, the CONSULTANT shall provide a copy of each insurance policy of the Sub-consultant or Sub-consultants required by the Contract for Professional Services 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 Sub-consultants. In addition, the CONSULTANT shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance of the Sub-consultants, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER by the CONSULTANT, constitute a warranty by the CONSULTANT, the Sub-consultant and the Sub-consultant's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

- (iv.) Upon request of the OWNER made any time after bids are opened, the CONSULTANT shall submit insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and Construction Manager (if applicable), and such other documents requested by the OWNER as proof of insurance for a Sub-consultant. OWNER may request proof of insurance for one or more Sub-consultants at the same or at different times and may request proof of insurance for a particular Sub-consultant as often as OWNER, in its sole and exclusive discretion, determines is necessary.

C. Insurance Provided by the CONSULTANT

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

- (a.) Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates:

(Accord certificates are not acceptable):

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

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

1. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
2. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
3. CE 200 Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as

required by law. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at <http://www.wcb.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contract.

- (c). Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the Consultant or Subconsultant for bodily injury, property damage, and personal/advertising injury arising from performance of the Work or operations or presence at or in the vicinity of the Site of the Contract. The policy shall utilize ISO form CG 00 01 12 07 or a form providing equivalent coverage. The limits under such policy shall not be less than the following for the Consultant: 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 \$5,000,000; and the Products Completed Operations limit shall be at least \$5,000,000. The limits under such policy shall not be less than the following for all Subconsultants: the limit for each occurrence shall be at least \$2,000,000; the general aggregate limit shall be at least \$4,000,000; the personal and advertising injury limit shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$2,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
1. If the CONSULTANT or Sub-consultant proposes the use of a policy other than the ISO form CG 00 01 12 07, the CONSULTANT or Sub-consultant shall provide the proposed policy to the OWNER which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The CONSULTANT or Sub-consultant shall pay OWNER any attorney fees and other costs incurred by OWNER in determining whether the proposed policy provides equivalent coverage. OWNER will select the attorney providing advice on the proposed policy.
 2. ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority, Client(s), any other entities as required by Appendix "D" of this Contract, 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.
 3. If the CONSULTANT or Sub-consultant proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, the CONSULTANT or Sub-consultant shall provide the proposed endorsement(s) to the OWNER or the OWNER's designee which, in its sole and exclusive discretion, will determine whether the proposed endorsements provide equivalent coverage. CONSULTANT and Sub-consultant shall pay OWNER any attorney fees and other costs incurred by OWNER in determining whether the proposed endorsements provide equivalent coverage. OWNER will select the attorney providing advice on the proposed endorsements.

4. Additional insured status for OWNER, Client(s), Construction Manager and any other entities as required by Appendix "D" and the CONSULTANT'S Contract Documents shall apply during the Products/Completed Operations phase as well as during the course of performance of the work of the Contract for CONSULTANT Services.
 5. The policy provisions required by Article X of this Contract for CONSULTANT Services.
 6. Excavation, Collapse and Underground Hazards.
 7. Independent CONSULTANT's /Sub-consultants.
 8. Blanket Written Contractual Liability covering all indemnity agreements, including indemnity obligations contained in the Contract for Professional Services, and covering tort liability of another assumed in a contract.
 9. 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.
 10. Premises liability.
 11. Defense and/or indemnification obligations, including obligations assumed under this Contract for Professional Services.
 12. Cross liability for additional insureds.
 13. CONSULTANT and Sub-consultant means and methods.
 14. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
 15. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
 16. The maximum deductible or self-insured retention shall be \$50,000.
 17. No endorsement or provision in the policy shall exclude coverage for OWNER, Client(s), or Construction Manager for any liability when the injured party is an employee of CONSULTANT or any Sub-consultant.
 18. No endorsement or provision in the policy shall require privity of contract between the OWNER and Sub-consultant or between the Client(s) and the CONSULTANT or Sub-consultant or between the Construction Manager and the CONSULTANT or Sub-consultant in order for the OWNER, the Client(s), or the Construction Manager to have coverage as an insured on such insurance policy.
 19. If the CONSULTANT or Sub-consultant must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.
 20. No endorsement or provision in the policy shall have a height limitation or exclusion.
 21. No endorsement or provision in the policy shall have a classification exclusion with respect to work performed for the OWNER, Client(s), and Construction Manager.
 22. OWNER, Client(s), and Construction Manager shall be covered for any and all liability arising out of acts or omissions of CONSULTANT and any Sub-consultant.
- (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 for Professional Services, 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 for Professional Services involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be

provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

- (e). Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding sections, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding sections. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding sections. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the OWNER or Client(s) or any other entities as required by Appendix "D". Any other insurance maintained by the OWNER, the Client(s), or any other additional insured as required by Appendix "D" shall be in excess of and shall not contribute with the CONSULTANT's or Sub-consultant's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the OWNER's or Client(s)'s or Construction Manager's or other additional insured's own policy of insurance or the CONSULTANT's or Sub-consultant's insurance policies.
- (f). Professional Liability Insurance: Each of the CONSULTANT's and any Sub-consultant performing any work in connection with this Contract for Professional Services shall procure and maintain Professional Liability Insurance or Errors and Omissions Liability Insurance, as applicable, for the work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the CONSULTANT or Sub-consultant by this Contract for Professional Services or law arising out of any negligent act, error, or omission in the rendering of or failure to render CONSULTANT services required by this Contract for Professional Services. 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 CONSULTANT or Sub-consultant, 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.
- (ii). Notwithstanding any other provision of the Contract for CONSULTANT Services to the contrary and to the fullest extent permitted by law, CONSULTANT shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the OWNER, the Client(s) or the Construction Manager in any action brought by or against the OWNER, Client(s) or Construction Manager concerning insurance coverage owed to OWNER, Client(s) or Construction Manager by any insurer for which CONSULTANT or any Sub-consultant represented that the OWNER, Client(s) and Construction Manager would be an insured or would benefit in any way if a claim was brought against OWNER, Client(s) and Construction Manager .

D. Other Insurance Provided by CONSULTANT

- (i) The CONSULTANT and each Sub-consultant shall also procure and maintain as required by Subsections X.A.ii and X.C.i of this Contract for Professional Services, 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 for Professional Services, the CONSULTANT or any Sub-consultant 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 CONSULTANT and any such Sub-consultant shall be

endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.

- (b) CONSULTANT's Pollution Liability insurance: When the work in connection with this Contract for Professional Services 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 CONSULTANT or any Sub-consultant performing work involving any of the pollutants, shall procure and maintain in full force and effect pollution legal liability insurance with limits of at least \$2,000,000 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:
1. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and any other entities specified in Appendix "D".
 2. The policy provisions required by Article X of this Contract for Professional Services.
 3. A maximum deductible or self-insured retention of \$50,000.
 4. Coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the OWNER, Client(s) or Construction Manager arising from the work in connection with this Contract for Professional Services.
 5. Coverage shall be provided until three years after the OWNER issues the Certificate of Physical Completion.
- (c) Railroad Protective Liability insurance: If any work of the Contract for Professional Services 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 CONSULTANT 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 CONSULTANT shall provide a Railroad Protective Liability insurance policy, the CONSULTANT and any Sub-consultant 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 CONSULTANT or Sub-consultant 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 CONSULTANT and any Sub-consultant performing any work in connection with this Contract for Professional Services 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 CONSULTANT shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract for Professional Services with a minimum limit of \$2,000,000. The OWNER, the Client(s), if applicable, the Construction Manager and other entities specified in Appendix "D" and on the sample certificate of insurance provided by the OWNER in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:

1. The policy provisions required by Article X of this Contract for Professional Services.
 2. A maximum deductible or self-insured retention of \$50,000.
 3. Coverage shall be provided until the OWNER issues the Certificate of Physical Completion.
 4. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and any other entities specified in Appendix "D".
- (i) The CONSULTANT and each Sub-consultant shall also procure and maintain as required by Subsections X.A.ii and X.C.i of this Contract for Professional Services, 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 for Professional Services, the CONSULTANT or any Sub-consultant 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 CONSULTANT and any such Sub-consultant shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.
 - (b) CONSULTANT's Pollution Liability insurance: When the work in connection with this Contract for Professional Services 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 CONSULTANT or any Sub-consultant performing work involving any of the pollutants, shall procure and maintain in full force and effect pollution legal liability insurance with limits of at least \$2,000,000 providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:
 1. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and any other entities specified in Appendix "D" .
 2. The policy provisions required by Article X of this Contract for Professional Services.
 3. A maximum deductible or self-insured retention of \$50,000.
 4. Coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the OWNER, Client(s) or Construction Manager arising from the work in connection with this Contract for Professional Services.

5. Coverage shall be provided until three years after the OWNER issues the Certificate of Physical Completion.

- (c) Railroad Protective Liability insurance: If any work of the Contract for Professional Services 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 CONSULTANT 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 CONSULTANT shall provide a Railroad Protective Liability insurance policy, the CONSULTANT and any Sub-consultant 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 CONSULTANT or Sub-consultant 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 CONSULTANT and any Sub-consultant performing any work in connection with this Contract for Professional Services 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 CONSULTANT shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract for Professional Services with a minimum limit of \$2,000,000. The OWNER, the Client(s) and, if applicable, the Construction Manager and other entities specified in Appendix “D” and on the sample certificate of insurance provided by the OWNER in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:
1. The policy provisions required by Article X of this Contract for Professional Services.
 2. A maximum deductible or self-insured retention of \$50,000.
 3. Coverage shall be provided until the OWNER issues the Certificate of Physical Completion.
 4. Endorsement specifically naming as additional insureds: Dormitory Authority, the Client(s), and any other entities specified in Appendix “D”.

E. Stop Work Order – Insurance

- (i). All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The CONSULTANT shall be responsible to submit updated insurance certificates to the OWNER or the OWNER's designee thirty (30) calendar days prior to any insurance certificate expiration date.
- (ii). Failure of the CONSULTANT or any Sub-consultant to maintain the insurance required by the Contract for Professional Services or to provide the OWNER or the OWNER's designee with evidence of valid and in-force insurance coverage required by the Contract for Professional Services shall result in a Stop Work Order pursuant to General Terms and Conditions Article 5 – Termination or Suspension and/or withholding of payment to the CONSULTANT.
- (iii). At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CONSULTANT or Sub-consultant shall immediately cease work on the Project. The CONSULTANT or Sub-consultant shall not resume work on the Project until authorized to do so by the OWNER or the OWNER's designee.
- (iv). Any delay or time lost as a result of the CONSULTANT or Sub-consultant not having proper insurance required by this Contract for Professional Services or not providing the OWNER or the OWNER's designee with evidence of valid and in force insurance required by the Contract for Professional Services shall not give rise to a delay Claim or any other Claim against the OWNER. Further, the CONSULTANT may be liable to other consultants for costs incurred by reason of the CONSULTANT's, Sub-consultant's or Sub-contractor's failure to provide insurance.

F. Sub-contractor Insurance Requirements

- (i). To the extent that the CONSULTANT or any Sub-consultant retains any Sub-contractor in connection with the Project, such Sub-contractor's insurance obligations are identical to the obligations placed upon Sub-consultants pursuant to Articles X.A., X.B., X.C., X.D. and X.E. of this Contract for Professional Services, except that Subsections X.A.ii and X.C.i (f) of this Contract for Professional Services shall not apply to any Sub-contractor. Notwithstanding the above, such Sub-contractors shall only be required to maintain its insurance policies until Notice of Physical Completion or as otherwise directed by OWNER.

ARTICLE XI: GENERAL INDEMNITY

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

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made that allocates responsibility to the OWNER, the Client or the OWNER's related parties, the OWNER agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which the OWNER is responsible, and the OWNER agrees to

pay the CONSULTANT the percentage of uninsured defense costs that the CONSULTANT incurred based upon an apportionment of the OWNER's allocated responsibility.

A. **Intellectual Property Indemnity**

To the fullest extent permitted by law, the CONSULTANT shall defend, protect, hold harmless, and indemnify the OWNER and the OWNER's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the CONSULTANT has reason to believe the use of a required design, process or product is an infringement of a patent, the CONSULTANT shall be responsible for such loss unless such information is promptly given to the OWNER.

B. **Non-Exclusivity of OWNER's Remedies**

The OWNER's selection of one or more remedies for breach of this Contract for Professional Services shall not limit the OWNER's right to invoke any other remedy available to the OWNER under this Term Contract for Professional Services or by law.

C. **Waiver of Damages**

The CONSULTANT shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

D. **Interest**

The OWNER is entitled to interest on all amounts due from the CONSULTANT that remain unpaid thirty (30) calendar days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Article XI above.

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

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

ARTICLE XIII: ERRORS AND OMISSIONS

The CONSULTANT agrees that the cost to the CONSULTANT for corrections to the Contract Documents necessitated by design errors or omissions shall be part of the CONSULTANT's fee for Original Scope of Services and part of Original Reimbursables as established herein. Extra costs to the OWNER resultant from design errors or omissions may be recoverable from the CONSULTANT and its professional liability insurance carrier. Acceptance of the Contract Documents by the OWNER for purpose of bidding shall not relieve the CONSULTANT of any responsibility for design deficiencies, omissions, or errors.)

ARTICLE XIV: TIME OF COMPLETION

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

The CONSULTANT shall complete all Services on or before TBD.

ARTICLE XV: ASSIGNMENT

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

ARTICLE XVI: APPENDIX "D" ADDITIONAL INSUREDS

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

ARTICLE XVII: APPENDIX "E" ADDITIONAL ITEMS

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

ARTICLE XVIII: M/WBE & SDVOB CONTRACT GOALS

RESERVED.

ARTICLE XIX: 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.

ARTICLE XX: NYS OFFICE OF THE STATE COMPTROLLER APPROVAL

In accordance with Public Authorities Law §2879-a, this Contract was determined by the NYS Office of the State Comptroller to be subject to the Comptroller's prior approval. Therefore, this Contract shall not be valid, effective, or binding upon the State until it has been approved by the State Comptroller.

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: _____
Authorized Officer

Title: _____

Date: _____

Name of Firm
Address
Address

By: _____
Authorized Officer

Title: _____

Date: _____

SAMPLE

NEW YORK STATE ACKNOWLEDGEMENT

State of New York)
)SS
County of _____)

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

(NAME)

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

Signature of Notary

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

NEW YORK STATE ACKNOWLEDGEMENT

State of New York)
)SS
County of _____)

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

(NAME)

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

Signature of Notary

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

APPENDIX "A"

SCOPE OF SERVICES

Objective

The Dormitory Authority of the State of New York intends to provide Materials Testing and Special Inspections Services to clients in order to comply with the relevant sections of, and in accordance with (1) the project requirements set forth in the Owner's Project Requirements, and (2) DASNY Materials Testing and Special Inspections Guidelines, , and other building code related documents.

Capital Project Materials Testing and Special Inspections Services

1) GENERAL

- a) The scope of services shall include conducting Special Inspections as regulated by the applicable Building Code and all applicable references as well as inspection and testing of other items identified below that may not be regulated by the Code.
- b) The duties listed below are not necessarily all inclusive. In addition to the duties listed below, the Professional's personnel may be asked to perform other duties that are identified in the contract documents for any Project and for which they possess the qualifications. Services requested that are not included in this Chapter will be written into the individual work authorization for the respective project.
- c) If there is a conflict between the duties listed below, in the relevant Building Code and those identified in the contract documents for a Project, the more stringent requirements shall take precedence.
- d) The Professional shall develop and maintain a Quality Assurance Manual that contains procedures for ensuring the quality of the services offered. At a minimum, the manual shall provide for the following: equipment calibration and maintenance, personnel training and evaluation, test method procedures and references, participation in proficiency programs, and other procedures for ensuring the quality of internal and external technical services. This manual shall be made available for review by the Owner or Registered Design Professional (RDP) of Record upon request.
- e) The Professional shall staff projects with the most appropriately experienced and accredited personnel based on the project needs and requirements.
- f) The Professional may engage all subconsultants as may be necessary to complete the scope of work. Prior to entering into a contract with any sub-consultant, the Professional shall provide proper notification of their intent. The Owner reserves the right to disapprove the use of any subconsultant.

2) QUALIFICATIONS

- a) The Professional shall enter and maintain employee and laboratory qualification information into an on-line database provided by the Owner. All information regarding laboratories and employees to be utilized for projects must be entered into the database on a project by project basis, prior to on-site work commencing. The Professional must update the database whenever changes occur in order to keep the database current.
- b) All costs associated with training, certification, qualification and accreditation of the Professional and their personnel shall be the responsibility of the Professional.

- c) Company
 - i) Testing agencies providing special inspection services on projects performed under the Building Code of New York State must be established and recognized agencies regularly engaged in conducting tests or furnishing inspection services.
- d) Laboratories
 - i) All laboratory facilities performing materials testing special inspection services for the Owner shall be accredited by American Association of State Highway Transportation Officials (AASHTO) and/or The National Voluntary Laboratory Accreditation Program (NVLAP) in the areas covered by the scope of work. Equivalent accreditation by other organizations may be reviewed and accepted by the Owner on a case-by-case basis, upon receipt of a formal written request from the Professional.
 - ii) The laboratory facilities must participate in the laboratory inspection program (LIP) and proficiency sample program (PSP) administered by the Cement and Concrete Reference Laboratory (CCRL) for concrete, and AASHTO Materials Reference Laboratory (AMRL) for soils. Laboratory facilities must maintain participation in these programs throughout the term of this Contract, which includes inspections approximately every 24 months.
 - iii) Where inspection and testing agencies have multiple offices performing special inspection and testing services for the Owner, each office shall be individually accredited to meet the above requirements.
- e) Personnel
 - i) The Professional represents that its officers, employees and subconsultant's have the relevant experience, education, licenses and certifications required by this Contract to perform the duties for specified herein.
 - i) Relevant experience shall be considered direct participation and practice related to the underlying construction activities that are the subject of inspection, where such participation has led to accumulation of knowledge and skill required for the proper execution of such inspection on projects of similar size and complexity. The Professional shall provide written documentation to the Owner demonstrating the experience and training is related in complexity to the same type of special inspection activities for projects of similar complexity to that required under this Agreement.
 - ii) Professional Engineers and Registered Architects shall be licensed/registered in New York State.
 - iii) Bachelors or Masters degrees shall be from an accredited institution or equivalent. Those applying for 'equivalent' status shall provide back up from a third-party evaluation service.
 - iv) Inspector and technician certifications shall be from the nationally recognized agencies listed herein and be maintained current.
 - ii) The Professional shall employ Supervisory personnel meeting requirements of the applicable Code and associated reference standards, rules, laws and bulletins.
 - i) The Professional shall designate a full-time director who shall be a registered design professional in New York State and have oversight and responsible control of the inspection agency, including the following:

- (1) ensuring that qualified inspectors are dispatched for special inspections, such inspectors properly document their activities, and reports and logs are prepared in accordance with the Code and this Contract;
 - (2) ensuring training and/or education necessary to qualify the inspector for his or her duties, including continued training and education necessary to keep pace with developing technology.
- ii) The Professional shall designate a primary inspector or inspection supervisor for projects performed under this Contract. Supervision shall mean oversight and responsible control by a registered design professional having necessary qualifications and relevant experience to perform responsibilities associated with the special, progress or other inspection or test. The inspection supervisor shall:
- (1) ensure training and/or education necessary to qualify the special inspector for his or her duties, including continued training and education necessary to keep pace with developing technology;
 - (2) determine competence of special inspectors for the work they are authorized to inspect and provide on-site monitoring of the special inspection activities at the job site to assure that the qualified special inspector is performing his or her duties when work requiring inspection is in progress; and
 - (3) review special inspection progress reports and final reports for conformance with the approved plans, specifications and workmanship provisions of Chapter 17 of the Code or elsewhere in the construction codes or their referenced standards. Such supervision and control shall be evidenced by the supervisor's signature and seal upon any required statements, applications and/or reports.
- iii) The Professional shall submit to the Owner for review the names of individuals they intend to use on a specific project and maintain qualifications and detailed resumes in the Owner's on-line database. The submission must detail each individual's intended role on the project and show that the individuals meet the minimum qualifications outlined herein and in the applicable Building Code for the specific project assignment(s) they will perform.

3) REPORTING

- a) The Professional shall keep complete records for all tests and inspections. Prepare detailed written reports with backup documentation and distribute reports as directed by the Owner.
- b) Daily reports:
 - i) Submit daily draft reports on-site at the end of each day describing the tests and observations made.
 - ii) Document work in progress and nonconforming work, including observed deficiencies, who was notified, and action taken to correct nonconforming work and deficiencies. Update the status of work in progress.
 - iii) Ensure that report formats include a section to document for follow-up areas requiring future attention and or re-inspection by Special Inspection personnel.

- iv) Identify and itemize any changes authorized by architect/engineer. Report all uncorrected deviations from plans or specifications and approved construction documents.
 - v) Provide final reports within five working days, unless otherwise agreed upon, of the actual inspection/test. All reports shall be entered in the Owner's Project Management System (Contract Manager), as discussed further below.
 - vi) The Professional shall record all project related information in the Owner's or Owner's Representatives Project Management System (e.g.: Contract Manager - Primavera Expedition™, PMWeb, Submittal Exchange) when required for the specific project. The Professional agrees to request user accounts to the Owner's Project Management System for each employee who will be working on the project. The Professional further agrees to have their employees attend training in the use of the Owner's Project Management System, and to utilize the DASNY User Guide Manuals to perform necessary tasks. Training will be provided by the Owner.
 - vii) The Professional shall have the capability to distribute reports to all required parties electronically in a format acceptable to the Owner. This may be accomplished using one or more methods, (i.e., web based system, pdf format, etc.).
 - viii) The Professional shall utilize forms and templates appropriate to the test and/or inspection being performed. The format and content of all inspection and report templates used by the Professional shall meet the approval of the Owner. The Professional shall modify their forms as necessary, or use forms provided by the Owner. Upon request, the Professional shall provide copies of all forms to the Owner.
- c) Documentation of deficiencies:
- i) Report all noted deficiencies immediately (verbally) to the Contractor and designated Owner's representative prior to site departure and follow up in writing for unresolved issues.
 - ii) All deviations from contract drawings, specifications, shop drawings and approved submittals; as well as deviations from applicable reference standards; and any field modifications shall be documented on a non-conformance or deficiency report. Minor field conditions that are corrected and confirmed on the same day as observed should not receive an NCR, but should be noted in the daily reports.
 - iii) The Professional shall track and maintain a log of all non-conformance reports. The current log shall be issued on a mutually agreeable schedule on a per project basis.
 - iv) Maintain a photo log as directed. Photo log to be submitted to DASNY upon request.
 - v) The Professional shall track and maintain a log of all re-inspections required due to deficient work by the contractor, along with their cost to perform such re-inspections. Notify the Owner if, upon re-inspection, any contractor fails to remove, correct or replace deficient construction work, equipment or materials.
- d) Close-out Documentation
- i) For projects governed by the Building Code of New York State, the Professional shall complete the Final Report of Special Inspections provided by the Owner. Provide certification, including signing, sealing and submittal of form(s).
 - ii) For quality control inspections the Professional shall complete the Final Report of Quality Assurance form as provided by the Owner

4) OTHER CONDITIONS

- a) The Professional shall maintain copies of all inspection and test reports and shop drawings and other submittals that were used in completing inspections and tests for a period of six years following project completion or as may be required by the building official.
- b) Supervisory personnel shall make periodic, but not less than monthly, site visits to observe the performance of field personnel working on Owner projects to verify that the services being provided meet the requirements of this contract, applicable reference standards, Building Codes and the Professional's Quality Assurance Program. At the request of DASNY the supervisor shall prepare a trip report which, at a minimum, shall include an update on the progress of work; a summary of all opened and closed non-conformances since the last site visit; assessment of technician performance of field personnel, including commentary on quality of reports; and highlight any problems that may impact sign-off.
- c) Project site sign-in procedures:
 - i) The Professional's personnel must complete a DASNY SITU sign-in sheet when reporting to a site. The sign-in sheet must indicate the total number of hours worked and the actual time worked each day, (i.e., 8 AM to 12 PM, 12PM to 12:30PM lunch, 4:30 PM sign out). Lunch time is not chargeable. The Professional's personnel must also identify how many of the hours spent on site were performing re-inspections of previously identified work found not in conformance with the approved construction documents.
 - ii) A representative of the Owner shall be designated to verify the time reported on the sign-in sheets. If the designated individual is not present, obtain verification from other Owner representatives or complete the section for no verification signature available in the case where the Owner or Owner's representative is not on site and/or not available for counter signature.
 - iii) The sign-in sheets shall be attached to the invoices which will be used for billing purposes.
 - iv) In general, no payments shall be made for services unless the Consultant has signed in and out using the sign-in sheet provided by the Owner. However, under certain circumstances, and where no representative of the Owner is present, signing in and out using the Construction Managers or a project security log book, or other pre-approved arrangement, may be accepted.
- d) The Professional shall be required to attend meetings with Project personnel as directed or requested by the Owner.
- e) The Owner reserves the right to refuse to pay any invoice submitted by the Professional for services performed by an employee before the Owner has approved that employee or after the Owner has ordered the Professional to replace an employee.
- f) The following Sections outline the scope of technical services required under this Contract, with emphasis on special inspections. In addition to these items, the Professional may be requested to perform related quality control testing and inspection services specified as the Owner's responsibility in the Construction Documents for a project, including work that may not require special inspection, such as testing and inspections associated with site work or utilities. Such items, when required, will be written into the Professional's Work Authorization where practicable.

5) INSPECTION OF FABRICATORS

- a) Certifications/Qualifications Required:
 - i) Personnel providing special inspection services on the premises of a fabricators shop shall be qualified as follows:

- (l) For projects governed by the Building Code of New York State, fabrication inspectors shall meet the following qualification requirements for the category in which they are providing service.
 - Precast Concrete; Refer to Item no. 12A
 - Steel Bar Joists; Refer to Item no. 8A
 - Metal Building – Welding; Refer to Item no. 8A
 - Structural Steel – Welding; Refer to Item no. 8A
 - Cold Formed Metal Framing - Welding; Refer to Item no. 8A
 - b) Functions: The following shall be performed by the qualified individuals working under the direct supervision of a Professional Engineer qualified in the category of work being fabricated.
 - i) When fabrication of structural members, assemblies and other regulated products is being performed on the premises of a fabricators shop, special inspection of the fabricated items shall be required in accordance with 1704.2 of the applicable Building Code.
 - ii) Inspection and testing services shall be required in accordance with the duties outlined for the inspection category associated with the work.
- 6) SOILS: Field Inspector - Fill Placement, In-Place Density**
- a) Certifications/Qualifications Required:
 - i) For projects governed by the New York State Building Code, soils field inspectors shall meet the qualification requirements noted below with the additional qualification that the individuals shall have at least one-year relevant experience.
 - (1) Level II certification in Geotechnical Engineering Technology/construction from the National Institute for Certification in Engineering Technologies (NICET), NICET Soils; or
 - (2) Northeast Transportation Training and Certification Program (NETTCP) Soils & Aggregate Inspector; or
 - ii) International Code Council (ICC)Soils Special Inspector, or
 - iii) Engineer in Training (EIT) with relevant experience; or
 - iv) Professional Engineer (PE) with relevant experience.
 - b) Functions: The following functions shall be performed by the qualified individuals working under the direct supervision of a Professional Engineer.
 - i) For projects performed under the New York State Building Code, the scope of services shall include the following items as identified in BC Table 1705.6:
 - i) Item 3 – Perform classification and testing of controlled fill materials.
 - ii) Item 4 – Verify the use of proper materials, placement of proper lift thicknesses and compaction to required densities of all controlled fills during placement.
- 7) SOILS: Soils Engineer - Site Preparation, Pile Foundations, Drilled Pier Installation and Underpinning**
- a) Certifications/Qualifications Required:
 - i) For projects governed by the New York State Building Code, soils field inspectors shall meet the following qualification requirements:
 - i) Primary Inspector or Inspection Supervisor;
 - (1) PE – Geotechnical, Civil, or Structural, and 1 year relevant experience.
 - (2) EIT with 1 year relevant experience.
 - b) Functions: The following functions shall be performed by qualified individuals working under the direct supervision of a Professional Engineer, or by a Professional Engineer.
 - i) For projects performed under the New York State Building Code, the scope of services may include the following items as defined further in the Code:

- (1) BC Table 1705.6 item 1 – Verify materials below footings are adequate to achieve the design bearing capacity;
- (2) BC Table 1705.6 item 2 – Verify excavations have extended to the proper depth and have reached the proper material;
- (3) BC Table 1705.6 item 5 – Prior to placement of structural fill, verify that the site has been prepared properly;
- (4) All work associated with pile and pier foundations as outlined in BC Tables 1705.7 and 1705.8.

8) STRUCTURAL STEEL

a) Qualifications:

- i) For projects governed by the New York State Building Code, steel inspectors shall meet the following qualification requirements:

i) Welding;

- (1) Current American Welding Society (AWS) Certified Welding Inspection (CWI); or
- (2) Current AWS Certified Associate Welding Inspector (CAWI) with direct supervision by Current CWI; or
- (3) Current ICC Structural Steel and Welding Certificate plus 1 year relevant experience; or
- (4) Current Level II certification from the American Society for Nondestructive Testing (NDT); or
- (5) Current NDT Level III provided previously certified as NDT level II;

ii) Erection and High Strength Bolting;

- (1) Current ICC Structural Steel and Welding Certificate plus 1 year relevant experience; or
- (2) ICC Structural Steel and Bolting with 1 year relevant experience; or
- (3) EIT with 1 year relevant experience; or
- (4) PE with 1 year relevant experience.

ii) Non-Destructive Testing (NDT):

- i) Current American Society for Non-Destructive Testing (ASNT) Level II Certified by current employer to 'SNT-TC-1A' or by ASNT Control Certified Program (ACCP) in the relevant NDT method; or

- ii) ASNT Level II or III certified to ACCP in the relevant NDT Method.

- b) Functions: The following functions shall be performed by the qualified individuals working under the direct supervision of a Professional Engineer, or Inspection Supervisor as applicable.

- i) For projects performed under the New York State Building Code, the scope of services shall include any or all of the items identified in NYSBC Section 1705.2, whether in the field or on the premises of a fabricators shop.
- ii) Non-destructive testing (NDT) shall be performed as required by the project construction documents.

9) CONCRETE: Batch Plant Inspector

a) Certifications/Qualifications Required:

- i) Current Certification as an American Concrete Institute (ACI) Concrete Field Testing Technician-Grade I and at least one year of batch plant inspection experience; or
- ii) NYSDOT Certified Batch Plant Inspector; or
- iii) NETTCP Concrete Technician

- b) Functions: The inspector shall perform the following duties at a frequency specified in the contract documents or as directed by the Owner's Representative:

- i) Verify that plant quality controls are adequate and perform functions listed in ACI 311.5.

10) CONCRETE: Field Technician

- a) Certifications/Qualifications Required:
 - i) Technicians shall be qualified by education and relevant experience and hold current certification as ACI Field Testing Technician – Grade I, or equivalent.
 - ii) Supervisors or Laboratory Directors shall be qualified as follows:
 - (I) For projects performed under the Building Code of New York State, the Supervisor or Laboratory Director shall be a licensed design professional and further qualified in accordance with ASTM E329, Paragraph 6.
- b) Functions: The field technician shall perform the following:
 - i) In accordance with the NYS Building Code concrete technicians shall be responsible for performing the following items as defined in BCNYS Table 1705.3:
 - (1) Item 5 – Verifying use of the required design mix, and
 - (2) Item 6 – Fabricate specimens for strength tests, perform slump and air content tests, and determine the temperature of the concrete.
 - (3) All services shall be provided in accordance with the reference standards and Code references cited in BCNYS Table 1705.3.

11) CONCRETE – CAST-IN-PLACE AND PRECAST: Field Inspector

- a) Certifications/Qualifications Required:
 - i) For projects governed by the New York State Building Code, concrete field inspectors shall meet the following qualification requirements:
 - i) Current ICC Reinforced Concrete Special Inspector; or
 - ii) ACI Concrete Construction Inspector; or
 - iii) NYS Licensed Professional Engineer with 1 year relevant experience; or
 - iv) Graduate Engineer in Civil Engineering with EIT with 2 years relevant experience; or
 - v) NETCCP Concrete Inspector with ACI Level 1 certification.
 - ii) Welding and Bolting (where required): Refer to Structural Steel Requirements.
- b) Functions: The inspectors and technicians shall perform the following functions under the direct supervision of a Professional Engineer who shall have the ultimate responsibility for all field tests and inspections:
 - i) The scope of services may include the following items identified in BCNYS Table 1705.3 as applicable:
 - i) Item 1 – Inspection of reinforcing steel and placement;
 - ii) Item 2 – Inspection of reinforcing steel welding;
 - iii) Item 3 – Inspect anchors/bolts to be installed/cast in concrete prior to and during placement of concrete where allowable loads have been increased;
 - iv) Item 4 – Inspect anchors post installed in hardened concrete members;
 - v) Item 7 – Inspection of concrete and shotcrete placement for proper application techniques;
 - vi) Item 8 – Inspection for maintenance of specified curing temperatures and techniques;
 - vii) Item 10– Erection of precast members;
 - viii) Item 11 - Verify in-situ concrete strength prior to stressing of elements;
 - ix) Item 12 – Inspect formwork for shape, location and dimensions of the concrete member being formed.

12) CONCRETE: Laboratory Technician

- a) Certifications/Qualifications Required:
 - i) ACI Concrete Strength Testing Technician, ACI Concrete Laboratory Testing Technician, Level I or II for the tests being performed.
 - ii) Supervisors or Laboratory Directors shall be qualified as follows:
 - i) For projects performed under the Building Code of New York State, the supervisor or Laboratory Director shall be a licensed design professional and further qualified in accordance with ASTM E329.
- b) Functions:
 - i) A Concrete Strength Testing Technician or a Level I Laboratory Technician shall perform required laboratory tests of concrete and concrete aggregates in accordance with relevant ASTM Procedures and Project requirements, including the following:
 - (1) Capping Cylindrical Concrete Specimens
 - (2) Unbonded Caps for Concrete Cylinders
 - (3) Compressive Strength of Cylindrical Concrete Specimens
 - (4) Flexural Strength of Concrete
 - ii) A Level II Laboratory Technician shall be required for the following:
 - (1) Evaluation of Strength Test Results of Concrete
 - (2) Selecting Proportions for Concrete
 - (3) Making and Curing Concrete Test Specimens in the Laboratory [
 - (4) Molds for Forming Concrete Test Cylinders Vertically
 - (5) Splitting Tensile Strength of Cylindrical Concrete Specimens
 - (6) Obtaining and Testing Drilled Cores and Sawed Beams of Concrete
 - (7) Standard Test Method for Length Change of Hardened Hydraulic-Cement Mortar and Concrete.

13) SPRAY FIRE RESISTANT MATERIALS (SFRM): Fireproofing Inspector

- a) Certifications/Qualifications Required:
 - i) For projects governed by the New York State Building Code, fireproofing field inspectors shall meet the following qualification requirements
 - i) Current ICC Spray-Applied Fire Proofing certificate plus 1 year relevant experience; or
 - ii) EIT with 2 years relevant experience; or
 - iii) PE with 1 year relevant experience;
- b) Functions: The inspectors shall perform the following functions under the direct supervision of a Professional Engineer or Primary Inspector (NYCBC), who shall have the ultimate responsibility for allfield tests and inspections:
 - i) The scope of services for projects under the Building Code of New York State shall include inspection of SFRM applied to structural members and decks in accordance with BC 1705.14 including:
 - (1) Verification of structural member surface condition per 1705.14.2;
 - (2) SFRM Application per 1705.14.3;
 - (3) SFRM Thickness per 1705.14.4;
 - (4) SFRM Density per 1705.14.5; and
 - (5) SFRM Bond strength per 1705.14.6.
 - ii) Special inspection of mastic and intumescent fire-resistant coatings in accordance with the Association of Wall and Ceiling Industries (AWCI) Technical Manual

14) MASONRY CONSTRUCTION: Inspector

- a) Certifications/Qualifications Required:
 - i) For projects governed by the New York State Building Code, masonry field inspectors shall meet the following qualification requirements, with the following clarifications:

- i) Current ICC Structural Masonry certificate with 1 year relevant experience;
 - ii) EIT with 2 years relevant experience;
 - iii) PE with 1 year relevant experience;
 - iv) Registered Architect (RA) with 1 year relevant experience.
- ii) For projects governed by the New York City Building Code, masonry field inspectors shall minimally meet the requirements of 1 RCNY 101-06, Appendix A under the following Special Inspection Category:
 - i) "Masonry"
- b) Functions: The inspectors shall perform the following functions under the direct supervision of a Professional Engineer or Primary Inspector (NYCBC), who shall have the ultimate responsibility for all field tests and inspection personnel:
 - i) The scope of services for projects under the Building Code of New York State Building Code shall be in accordance with BCNYS Section 1705.4.
 - ii) The scope of services for projects under the New York City Building Code shall be in accordance with the following, depending upon the structure and design:
 - (1) Projects requiring Level 1 Special Inspection in accordance with BC 1704.5.1 and 1704.5.2 shall be inspected in accordance with the BC Table 1704.5.1.
 - (2) Projects requiring Level 2 Special Inspection in accordance with BC 1704.5.3 shall be inspected in accordance with the BC Table 1704.5.3.

15) FIRESTOP, DRAFTSTOP, AND FIREBLOCK SYSTEMS

- a) Certifications/Qualifications Required:
 - i) Inspection for fire resistive penetrations and joints shall be provided by inspectors qualified to the applicable category for the work being performed, as follows:
 - 1) For projects governed by the New York State Building Code, inspectors shall be qualified as follows:
 - (a) PE or RA with 1 year relevant experience; or
 - (b) EIT with 2 years relevant experience; or
 - (c) Technician with 3 years relevant experience.
 - 2) For projects performed under the Building Code of New York City, inspectors shall meet the qualification requirements of 1 RCNY 101-06, Appendix A under the following Special Inspection Categories, as applicable:
 - (a) "Fire-resistant Penetrations and Joints"
- b) Functions: The inspectors shall perform the following functions under the direct supervision of a Registered Design Professional or Primary Inspector, who shall have the ultimate responsibility for all field tests and inspection personnel:
 - (1) Verify compliance of installations with the approved construction documents and/or their listing (for listed systems); or
 - (2) Inspect in accordance with ASTM E2174 and E2343 when authorized by the registered design professional of record.

APPENDIX "B"

SUMMARY OF PAYMENTS

MAXIMUM AMOUNT PAYABLE

A. CONSULTANT's SERVICES

1. Design Phase

2. Construction Phase

B. REIMBURSABLES

Reimbursable Expenses

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 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.

NTE = Not to Exceed

AE = Actual Expense

LS= Lump Sum

APPENDIX "C"

SCHEDULE OF TECHNICAL CLASSIFICATIONS AND HOURLY RATES

The following is a listing of Technical Classifications and Direct Hourly Rates associated with this Project. Changes in Rates, Classifications or Personnel must be verified by payroll records/audit and have the prior approval of the OWNER before payment can be authorized.

Schedule of Technical Classifications and Direct Hourly Rates for use with Additional Services and Extra Work of the CONSULTANT, pursuant to Article V.B.:

Technical Classifications

Direct Hourly Rate

Design Phase & Construction Phase:

*Maximum direct hourly rate is inclusive of overhead and profit.

The Multiplier for all direct hourly rates, excluding those classification(s) identified above as inclusive of overhead and profit for **Design and Construction Phases** is **TBD**.

APPENDIX "D"

ADDITIONAL INSUREDS

The policy shall name the following additional insured:

Dormitory Authority of the State of New York

New York State Department of Health (DOH)

The People of the State of New York, its Officers, Directors and Employees

NYS OGS

Questions concerning Additional Insured Requirements should be directed to Stacie Bennett, Senior Procurement Administrator at (518) 257-3309.

SAMPLE

APPENDIX "E"

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

Original drawings and specifications will become the property of the OWNER, and the CONSULTANT may not use the drawings and specifications for any purpose not relating to the Project without the OWNER's consent. The CONSULTANT may retain such reproductions of drawings and specifications as the CONSULTANT may reasonably require. Upon completion of the Work or any early termination of this Contract, the CONSULTANT 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 CONSULTANT's permission, for any proper purpose including, but not limited to, additions to or completion of the Project.

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 for Professional Services, as determined by the OWNER, the OWNER may give written notice to the CONSULTANT (i) terminating this Contract for Professional Services 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 for Professional Services 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 for Professional Services or suspending the Project, in whole or in part, for the OWNER'S convenience and without cause. If the OWNER terminates this Contract for Professional Services or suspends the Project, 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

1. If this Contract for Professional Services is terminated by the OWNER pursuant to Paragraph 7A above, no further payment shall be made to the CONSULTANT until completion of the Project. 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 *Professional Services Contract Payment Requisition* 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.

2. If this Contract For Professional Services 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 *Professional Services Contract Payment Requisition* 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 Professional Contract Price.

3. If this Contract for CONSULTANT Services 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 Professional Services.

4. Time of completion set forth in the Project Design Schedule 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 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 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

Unless otherwise directed by the OWNER, the CONSULTANT 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 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

The CONSULTANT shall render any assistance which the OWNER may require with respect to any claim or action in any way relating to the CONSULTANT'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 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. **AFFIRMATIVE ACTION AND NEW YORK STATE BUSINESS AND LABOR PARTICIPATION**

Reserved

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 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 one hundred thousand dollars (\$100,000) 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.

19. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANT

- 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.

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.

- B. 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
- C. 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.
- D. 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.
- E. 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.
- F. The CONSULTANT agrees to notify the OWNER's Office of Internal Affairs at 518-257-3193 of any activity by an employee of the OWNER that is inconsistent with the contents of this Section.
- G. 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.
- H. CONSULTANT shall at all times during the Contract term remain responsible. CONSULTANT agrees, if requested by the President of OWNER or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- I. The President of OWNER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of CONSULTANT. In the event of such suspension, CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, CONSULTANT must comply with the terms of the suspension order. Contract activity may resume at such time as the President of OWNER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- J. Notwithstanding any other provision of this Contract, upon written notice to CONSULTANT, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, the Contract may be terminated by the President of OWNER or his or her designee at CONSULTANT's expense where CONSULTANT is determined by the President of OWNER or his or her designee to be non-responsible. In such event, the President of OWNER or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
- K. By entering into this Contract, CONSULTANT certifies, under the penalties of perjury, that CONSULTANT is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. CONSULTANT further certifies that CONSULTANT will not utilize

on this Contract any Subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.

- L. During this Contract, should OWNER receive information that a person (as defined in New York State Finance Law §165-a) is in violation of the above-referenced certifications, OWNER will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OWNER shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the CONSULTANT in default.

20. 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; Subcontractor, CONSULTANT and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. 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 Subcontractor, 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 Subcontractor, CONSULTANT and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, CONSULTANTs and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

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

The CONSULTANT shall not make any payments to a Subcontractor, 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.

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.

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 CONSULTANT shall, to the maximum extent practicable, follow guidelines for the construction of "Green Buildings" including, but not limited to, DASNY's Sustainability Policy, guidelines set forth in Tax Law Section 19, which created the Green Buildings Tax Credit and the United States Green Building Council's (USGBC) LEED (Leadership in Energy and Environmental Design) rating system, in all buildings as applicable.
- B. The CONSULTANT shall be required to demonstrate compliance to the maximum extent practicable, with the New York State Green Building Construction Act (GBCA, enacted in 2009), affecting state owned facilities and with the New York State Executive Order 88. The GBCA calls for LEED submission, benchmarking, energy and water use reporting and air quality reporting based on building size and use. Under EO #88 buildings across the state owner entity's full portfolio shall increase energy efficiency by twenty (20) percent in seven years relative to established energy use index baselines as required.
- C. The CONSULTANT 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 CONSULTANT shall use the services of a Technical Assistance Provider approved by NYSERDA. The Technical Assistance Provider shall assist the CONSULTANT 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. Costs of these services are part of the CONSULTANT's service requirements.

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 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 Appendix "E" Section 7.a. of this Contract – Termination for Cause.

26. NONCOMPLIANCE

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