

CONTRACT

A Contract, dated as of _____ 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 _____, whose office is located at _____, (the “**CONSULTANT**”).

WHEREAS, the **OWNER** has requested the **CONSULTANT** to provide Audit Services, hereinafter referred to as the Project; and

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

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

ARTICLE I: CONSULTANT'S SERVICES

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

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

ARTICLE II: ADDITIONAL SERVICES

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

ARTICLE III: EXTRA WORK

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

ARTICLE IV: CONSULTANTS

- A. The OWNER may retain a subconsultant(s) to furnish services throughout the term of this Contract, and the CONSULTANT shall cooperate with said subconsultant(s).
- B. The CONSULTANT may propose and engage subconsultants, to perform portions of the Services required under this Contract. The OWNER retains the right to disapprove the proposed subconsultant and, in such event, the CONSULTANT shall propose another subconsultant for that portion of the required Services. The CONSULTANT shall be responsible to the OWNER for the timely and efficient completion of all Services performed by said subconsultant. The fees of any subconsultants retained by the CONSULTANT for services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1. The fees of any subconsultants retained by the CONSULTANT for services required under Article III shall be paid as outlined in Article V.B.
- C. The CONSULTANT shall pay its subconsultants the full amount due them from their proportionate share of each requisition for payment submitted by the CONSULTANT and paid by the OWNER. The CONSULTANT shall make said payment no later than seven (7) calendar days from receipt of payment from the OWNER.
- D. Payment to the CONSULTANT shall only be rendered electronically, unless payment by paper check is authorized in writing by the OWNER. The CONSULTANT further acknowledges and agrees that the OWNER may withhold payments, if the CONSULTANT has not complied with the OWNER's requirements relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the OWNER.

ARTICLE V: PROVISION FOR PAYMENT

MAXIMUM AMOUNT PAYABLE

Services shall be authorized by The OWNER based on an Engagement Letter issued to the CONSULTANT. Appendix "B", entitled **SUMMARY OF PAYMENTS**, is attached to and made a part hereof.

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

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

A. CONSULTANT'S SERVICES

1. Original Scope of Services

The OWNER shall pay, and the CONSULTANT agrees to accept, as compensation for Original Scope of Services pursuant to Appendix "A", which is attached.

B. ADDITIONAL SERVICES AND EXTRA WORK

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

ARTICLE VI: REIMBURSABLE EXPENSES

N/A

ARTICLE VII: WITHHOLDING OF PAYMENTS

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

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

ARTICLE VIII: FINAL PAYMENT AND RELEASE

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

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

ARTICLE IX: OWNER'S PROCEDURE

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

ARTICLE X: INSURANCE

A. General Provisions

- (i). The CONSULTANT and Subconsultants shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and of the insurance companies issuing such policies.
- (ii). The CONSULTANT and Subconsultants shall maintain in force all insurance required to be procured by them under this Contract for CONSULTANT 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 Subconsultants 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 Subconsultants under this Contract for CONSULTANT Services shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company or meet such other requirements as are acceptable to the OWNER in its sole and exclusive discretion.
- (iv). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that 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 Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the OWNER.
- (vi). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall be written on an occurrence basis except where this Contract for CONSULTANT Services explicitly allows otherwise.

- (vii). All insurance policies required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that the OWNER and the Client(s) shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the CONSULTANT or Subconsultant shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. At any time this Contract for CONSULTANT Services requires the CONSULTANT or any Subconsultant to maintain an insurance policy, the OWNER may require the CONSULTANT or any Subconsultant to provide proof, acceptable to the OWNER in its sole discretion, that the CONSULTANT or Subconsultant has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the CONSULTANT or Subconsultant may be liable under the claims pending or reasonably possible against the CONSULTANT or Subconsultant at the time the OWNER requires the proof. A failure of the CONSULTANT or Subconsultant to provide such proof is a failure of the CONSULTANT or Subconsultant to maintain the insurance required by the Contract 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 Subconsultants 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's policies or any of the policies of any Subconsultant prohibit such a waiver of subrogation, the CONSULTANT or Subconsultant shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the OWNER.
- (ix). Each liability and protective liability insurance policy required to be procured and maintained by the CONSULTANT and Subconsultants under this Contract for CONSULTANT Services shall include a provision or endorsement that the coverage afforded the OWNER, 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's or Subconsultant'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's or Subconsultant'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 Subconsultants to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the OWNER or Client(s).

- (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 Subconsultants to provide, at the expense of the OWNER, any other form or limit of insurance in addition to the insurance requirements of the original Contract for CONSULTANT Services necessary to secure the interests of the OWNER, 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 Subconsultant from any of the obligations or risks accepted by the CONSULTANT and Subconsultants or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the OWNER, 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 Subconsultant, and the insurers of each. Each insurance company from which OWNER or Client(s) has directly purchased an insurance policy is a third-party beneficiary of the CONSULTANT's and each Subconsultant's obligations to procure insurance.
- (xiv). CONSULTANT is responsible for ensuring that each Subconsultant obtains and maintains in the required amount each type of insurance policy required by this Contract for CONSULTANT Services and that such insurance policy provides the OWNER, Client(s) and Construction Manager with the coverage required by this Contract for CONSULTANT 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 Professional 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. Certificates of insurance, notwithstanding anything to the contrary

contained on the Certificate of Insurance, when submitted to the OWNER, constitute a warranty by the CONSULTANT and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

- (ii). The CONSULTANT shall submit to the OWNER or OWNER's designee insurance certificates (Accord 25, or equivalent as determined by the OWNER), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the OWNER, Client(s), and such other documents requested by the OWNER as proof of insurance for the CONSULTANT. All insurance submittals must be approved by the OWNER or the OWNER's designee prior to the CONSULTANT's commencement of work.
- (iii). Upon the OWNER's request, the CONSULTANT shall submit to the OWNER or OWNER's designee proof of insurance for one or more Subconsultants, in such forms as requested and deemed acceptable by the OWNER, indicating the 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 Subconsultant or Subconsultants 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 Subconsultants. In addition, the CONSULTANT shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance of the Subconsultants, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the OWNER by the CONSULTANT, constitute a warranty by the CONSULTANT, the Subconsultant and the Subconsultant's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- (iv.) Upon request of the OWNER 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 such other documents requested by the OWNER as proof of insurance for a Subconsultant. OWNER may request proof of insurance for one or more Subconsultants at the same or at different times and may request proof of insurance for a particular Subconsultant as often as OWNER, in its sole and exclusive discretion, determines is necessary.

C. Insurance Provided by the CONSULTANT

- (i.) Prior to award of this Contract, the CONSULTANT shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract all of the insurance required under this Contract. Each Subconsultant shall procure, at its sole cost and expense, prior to the CONSULTANT submitting to the OWNER the name of such Subconsultant and prior to such Subconsultant commencing performance of any of the work, and each Subconsultant shall maintain in force at all times required by this Contract

all of the insurance required under this Contract. The insurance that the CONSULTANT and each Subconsultant shall procure and maintain under this Contract includes, but is not limited to, the following:

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

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

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

1. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
2. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
3. CE 200 Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at <http://www.wcb.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contract.

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

6. Independent CONSULTANT s/subconsultants.
 7. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in this Contract, and covering tort liability of another assumed in a contract.
 8. Products and completed operations coverage for a term no less than three years after the required services are complete per written notification to the CONSULTANT by the OWNER.
 9. Premises liability.
 10. Defense and/or indemnification obligations, including obligations assumed under this Contract.
 11. Cross liability for additional insureds.
 12. CONSULTANT and Subconsultant means and methods.
 13. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
 14. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
 15. The maximum deductible or self-insured retention shall be \$50,000.
 16. No endorsement or provision in the policy shall exclude coverage for OWNER or Client(s) for any liability when the injured party is an employee of CONSULTANT or any Subconsultant.
 17. No endorsement or provision in the policy shall require privity of contract between the OWNER and Subconsultant or between the Client(s) and the CONSULTANT or Subconsultant in order for the OWNER, the Client(s) to have coverage as an insured on such insurance policy.
 18. If the CONSULTANT or Subconsultant must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.
 19. No endorsement or provision in the policy shall have a height limitation or exclusion.
 20. No endorsement or provision in the policy shall have a classification exclusion with respect to work performed for the OWNER and Client(s).
 21. OWNER and Client(s) shall be covered for any and all liability arising out of acts or omissions of CONSULTANT and any Subconsultant.
- (d). Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with this Contract, including owned, leased, hired and non-owned vehicles

bearing or, under the circumstances under which they are being used, required by the laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least \$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract for CONSULTANT 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 Construction Manager or any other additional insured. Any other insurance maintained by the OWNER, the Client(s), or any other additional insured shall be in excess of and shall not contribute with the CONSULTANT's or Subconsultant's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the OWNER's or Client(s)'s or other additional insured's own policy of insurance or the CONSULTANT's or Subconsultant's insurance policies.
- (f). Professional Liability insurance: Each of the CONSULTANT and any Subconsultant performing any work in connection with this Contract shall procure and maintain Professional Liability Insurance or Errors and Omissions Liability Insurance, as applicable, for the work with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the CONSULTANT or Subconsultant by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. This insurance may be issued on a claims-made policy form and shall be maintained for no less than three (3) years after required services are complete per written notification to the OWNER. The policy, at the sole expense of the CONSULTANT or Subconsultant, shall have extended Discovery Clause coverage of at least three (3) years after required services are complete per written notification to the OWNER if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.
- (ii). Notwithstanding any other provision of this Contract to the contrary and to the fullest extent permitted by law, CONSULTANT shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the OWNER or the Client(s) in any action brought by or against the OWNER or Client(s) concerning insurance coverage owed to OWNER or Client(s) by any insurer for which CONSULTANT or any Subconsultant represented that the OWNER or Client(s) would be an insured or would benefit in any way if a claim was brought against OWNER and Client(s).

D. Other Insurance Provided by CONSULTANT

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

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

CONSULTANT is required to maintain during the term of the contract, Data Breach and Privacy Liability Insurance (Cyber Insurance), including coverage for the failure to protect confidential information and failure of the security of the CONSULTANT's computer systems or the OWNER's systems due to the actions of the CONSULTANT which results in unauthorized access to the OWNER or its data. Said Insurance shall provide coverage for damages arising from, but not limited to the following:

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

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

(ii). Technology Errors and Omissions Liability Insurance

The CONSULTANT shall maintain, during the term of the contract, Technology Errors and Omissions Liability Insurance for Claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, and computer software developed, manufactured, distributed, licensed, marketed or sold.

The policy shall include coverage for third-party fidelity including cyber theft. If the policy is written on a Claims-Made basis, the CONSULTANT must provide to the OWNER proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not

renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.

(iii). Crime Insurance

If during the term of the contract, the CONSULTANT or SUBCONSULTANT plans to enter the premises of an OWNER to fulfill its obligations under the contract, the CONSULTANT or SUBCONSULTANT shall be required to maintain, during the term of the contract, Crime Insurance on a “loss sustained form” or “loss discovered form,” and the coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future Claims.
- Any warranties required by the CONSULTANT or SUBCONSULTANT’s Insurer as a result of the contract must be disclosed and complied with. Said Insurance shall extend coverage to include the principals (all directors, officers, agents, and employees) of the CONSULTANT or SUBCONSULTANT as a result of the contract.
- The policy shall include coverage for third-party fidelity and name “The OWNER and their officers, agents and employees” as “Loss Payees” for all third-party coverage secured. This requirement applies to both primary and Excess Liability Policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

The policy shall include coverage for, but is not limited to, employee theft, forgery or alteration, inside the premises-theft of money and securities, inside the premises-robbery or safe burglary of other property, outside the premises computer crime/fraud, and money orders and counterfeit paper currency.

E. Stop Work Order – Insurance

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

F. Subcontractor Insurance Requirements

Reserved

ARTICLE XI: HOLD HARMLESS

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

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

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

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

ARTICLE XIII: TIME OF COMPLETION

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

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

ARTICLE XIV: ASSIGNMENT

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

ARTICLE XV: APPENDIX "D" ADDITIONAL ITEMS

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

ARTICLE XVI – M/WBE & SDVOB CONTRACT GOALS

The N.Y.S. certified Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) goals for this Contract are 0% MBE, 0% WBE and 0% SDVOB. The goals refer to the utilization of M/WBE and SDVOB sub-consultants on DASNY Professional Services Contracts. With each project assignment the firm will be required to submit a new plan with dollar amounts.

ARTICLE XVII: COUNTERPARTS

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

ARTICLE XVIII – BACKGROUND CHECKS AND PRE-SCREENING

A. Background Check and Pre-screening Services

1. When the CONSULTANT proposes, and the OWNER recommends an individual to provide temporary services (the "Candidate"), the CONSULTANT shall perform a background check prior to employment at DASNY. The background check shall be in accordance with the respective job title, and shall meet the requirements as defined by the OWNER. All Candidates must have the ability to reside in and be employed legally in the United States to be submitted to the OWNER for consideration.
2. At the time the Candidate's resume is submitted to the OWNER the CONSULTANT shall include any recently (within the last six months) completed background check. The background check report shall be placed in a separate envelope and marked "Confidential", and will only be reviewed by authorized representatives within the OWNER. If the background check was performed more than six (6) months prior to the recommendation date, the CONSULTANT shall be required to perform an updated background check. If no background check was previously performed the CONSULTANT shall be responsible for performing such review.
3. The OWNER shall provide the CONSULTANT with the specific data search requirements to be included in each background check at the time the Candidate is recommended for employment. The CONSULTANT shall advise the OWNER of issues that arise prior to, or during the Candidate's employment with the OWNER. the OWNER may require the CONSULTANT to provide an updated background check as it deems necessary. The CONSULTANT's failure to advise the OWNER of such issues could result in a termination

in accordance with the terms of Appendix “D”, Item 7 – Termination or Suspension of this Contract.

4. The OWNER may, at its sole discretion, choose to conduct the background check of the Candidate. If the OWNER elects to conduct the background check, the OWNER shall secure the Candidate’s authorization to conduct such background check. the OWNER shall advise the CONSULTANT at the time of recommendation if it will be performing the background check on the Candidate.
5. The OWNER reserve the right to disapprove any Candidate prior to, or during employment.
6. The CONSULTANT shall be required to maintain records of any background check performed on Candidates that were employed by the OWNER. The CONSULTANT shall maintain a copy of said background check for a period not less than the term of the Contract. The CONSULTANT shall make available the background check(s) to the OWNER representatives upon request. the OWNER shall dispose of any background check reports it has on Candidates upon completion of employment.
7. The same conditions as are applicable to the CONSULTANT under these background check requirements shall be applicable to the CONSULTANT’ Subconsultants.

SIGNATURES

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

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

By _____

Title: Authorized Officer

Date: _____

Firm Name
Firm Address
Firm Address

By _____

Authorized Officer/Signatory

Title _____

Date: _____

NEW YORK STATE ACKNOWLEDGEMENT – DASNY

State of New York)

) SS:

County of _____)

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

(NAME)

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

Signature of Notary

NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant

State of New York)

) SS:

County of _____)

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

(NAME)

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

Signature of Notary

APPENDIX "A"

SCOPE OF SERVICES OF CONSULTANT

The selected CPA firm will be required to provide the following services:

- Develop a detailed audit plan to accomplish the scope of work described herein including the method of verifying cash, investments, and outstanding debt balances;
- Examine DASNY's basic financial statements;
- Examine the financial statements for each applicable debt resolution issued by DASNY as required by particular debt covenants;
- Perform complete audit examinations with corresponding reports as described below;
- Perform an interim review of investments. In addition, collateral for investment agreements, if any shall be verified at DASNY's fiscal year end and at least once on an unannounced basis during the fiscal year. The collateral for investment agreements is held in book-entry form by a third-party custodian. Provide a report of procedures performed, including findings, in connection with the investment review;
- Provide year-round technical assistance to DASNY personnel on various accounting matters, procedures and reporting requirements, including the implementation of applicable accounting pronouncements;
- Provide drafts of all reports, as described below, for review with the Audit Committee, Chief Financial Officer and other DASNY staff as may be appropriate and make necessary clarifications as may be appropriate, all before final publication of same;
- Present drafts of all reports, other than the Individual Restricted Debt Issue Financial Statements, as described below to DASNY's Audit Committee and Board at meetings in June of each year;
- Provide electronic format of basic financial statements including Management's Discussion and Analysis (MD&A) and footnotes and supplemental schedule of bonds and notes outstanding no later than the day following DASNY's June Board meeting in 2025, 2026, 2027, and if applicable, 2028 and 2029;
- Provide electronic format of DASNY's basic financial statements including opinion, MD&A and footnote disclosures no later than June 30 for the fiscal years ending March 31;
- Provide electronic format of supplementary information and additional reports as described below no later than June 30 for the fiscal years ending March 31;
- Provide a summary of audit procedures performed over investments;
- Provide electronic format of DASNY's individual restricted debt issue financial statements including opinions and footnotes on or about September 30 for the fiscal years ending March 31;
- Provide a schedule of actual hours worked on DASNY's audit by staff level and audit area at the conclusion of each annual audit;
- Meet with DASNY's Audit Committee, Board or management as deemed necessary; and
- Review drafts of DASNY's Annual Report.

It is expected that the CPA firm will attend a minimum of two meetings with the Audit Committee each year. The firm will present its planned scope and audit plan, including the firm's expectation of assistance from and reliance on DASNY staff at an initial meeting and will present and review all final reports including the management letter, if applicable, at the June meeting.

The CPA firm shall perform a complete audit examination in connection with DASNY's financial statements and operations. The scope of the audit shall be planned as to preclude the necessity for exceptions arising from scope limitations and shall be sufficient to enable the CPA firm to express an opinion on DASNY's basic financial statements as well as the financial statements for each restricted debt issue as applicable. The scope of the audit as detailed in the firm's formal plan will be reviewed by the Audit Committee, Chief Financial Officer and other DASNY staff as may be appropriate. The following paragraphs provide a general description of the scope of the engagement as well as the reports expected at the completion thereof.

It is essential that all final printed basic financial statements, supplementary information and additional reports including the management letter if applicable are received annually by June 30. This deadline excludes the individual restricted debt issue financial statements. **Draft copies of the basic financial statements, supplementary information and additional reports must be received in early June for review by staff and the Audit Committee and mailing to the Board.** These statements must be presented to DASNY's Board for their approval at a meeting to be held in June in order to meet the June 30 submission deadline for filing a copy of the final certified basic financial statements with the New York State Authority Budget Office and New York State Office of the State Comptroller.

The selected CPA firm will be required to provide the services described below. DASNY may terminate the services upon written notification from the Board giving thirty days' notice of intent to cancel and reason for termination of the engagement. At the end of the thirty-day period, the engagement shall be deemed to have been canceled and DASNY shall have no further liability under the terms and conditions of the engagement.

1. Basic Financial Statements

The basic financial statements are prepared to conform fully to GAAP and must be in full compliance with the pronouncements of the Governmental Accounting Standards Board (GASB) and/or the Financial Accounting Standards Board (FASB), as appropriate. The CPA firm shall provide an independent auditors' report on the examination of the basic financial statements.

The CPA firm shall furnish an electronic copy of the basic financial statements to DASNY by June 30. All costs of formulation, and delivery shall be borne by the CPA firm.

The basic financial statements shall include the following:

- a. Management's Discussion and Analysis
- b. Statement of Net Position
- c. Statement of Revenues, Expenses and Changes in Net Position
- d. Statement of Cash Flows
- e. Notes to the Basic Financial Statements

2. Supplementary Information

The CPA firm shall furnish the following supplementary information and related reports, including an independent auditors' report by June 30:

- a. Schedule of Assets, Liabilities, and Net Assets by Program
- b. Schedule of Revenues, Expenses and Changes in Net Assets by Program
- c. Schedule of Cash Flows by Program
- d. Schedule of Expenses – Budget and Actual
- e. Schedule of Bonds and Notes Outstanding
- f. Bonds and Notes Outstanding by Institution

3. Additional Reports

The CPA firm shall furnish the following reports by June 30:

- a. Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
- b. Report on Compliance with the Requirements of Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York
- c. Required Communications to the Audit Committee
- d. Management Letter, if applicable
- e. Investment Procedures Performed

4. Individual Restricted Debt Issue Financial Statements

The CPA firm shall provide a separate set of cash basis financial statements at the resolution level including an independent auditors' report and footnotes for each debt issue with such requirement (approximately 12 as of March 31, 2024). Each resolution may consist of more than one bond issue. The requirement to obtain an independent auditors' report on the resolution-level financial statements was eliminated from DASNY's bond resolutions during the year 2000. Consequently, the number of sets of resolution-level financial statements requiring an independent auditors' report decreases each year as bonds mature or defease.

The CPA firm shall perform a complete audit examination of each restricted debt issue including, but not limited to, the following:

- Verification of cash, investments and debt outstanding balances as of March 31.
- Verification of the interest on indebtedness and the bond redemptions during the current fiscal year;

The independent auditors' report for each resolution shall include a specialized paragraph which shall provide negative assurance as to compliance with the terms, covenants, or provisions of the respective debt resolutions with specific reference to reserve requirements and insurance requirements. Thus, the CPA firm must gain reasonable familiarity with all the debt resolutions.

Each individual set of financial statements shall include the following reports:

- a. Statement of Assets and Liabilities
- b. Cash Receipts and Disbursements by Fund
- c. Notes to the Financial Statements

The CPA firm shall furnish to the Authority an electronic copy of the individual sets of restricted debt issue financial statements on or about September 30. All costs of formulation, and delivery shall be borne by the CPA firm.

5. Technical Assistance

As part of the overall audit contract and included in the proposed fee for the overall DASNY audit, DASNY expects to receive from the CPA firm a variety of technical assistance throughout the fiscal year. This assistance would involve guidance on the implementation of applicable accounting pronouncements, as well as answers to accounting, reporting, payroll, taxation or internal control questions which could require telephone conversations or meetings with the engagement partner or engagement manager. These

types of assistance shall be rendered within the context of the overall fee for audit and related accounting services unless otherwise agreed upon in advance.

6. Billings

Each invoice for accounting services shall be submitted in accordance with the dates and amounts in the engagement letter and be accompanied by an MWBE Compliance Report. Invoices shall reference the Contract No.

7. Work Location

Unless otherwise noted, services will be performed at DASNY's main office located in Albany, NY.

8. Other

The selected firm may provide non-audit services to DASNY during the term of the audit engagement, as specifically approved by the Audit Committee.

DRAFT

APPENDIX "B"

SUMMARY OF PAYMENTS

CONSULTANTS SERVICES to be authorized by Engagement Letter

DRAFT

LS= Lump Sum

AE= Actual Expense

NTE= Not to Exceed

APPENDIX "C"

ADDITIONAL INSUREDS (if applicable)

Dormitory Authority State of New York

State of New York

DRAFT

APPENDIX "D"
ADDITIONAL ITEMS
TABLE OF CONTENTS

1. LABOR LAW PROVISIONS	26
2. NONDISCRIMINATION	27
3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED	29
4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS	29
5. CONTRACT DEEMED EXECUTORY	29
6. OWNERSHIP OF DOCUMENTS	29
7. TERMINATION OR SUSPENSION	29
8. SUSPENSION OR ALTERATION	31
10. CODES	31
11. GOVERNMENT PROVISIONS	31
12. COOPERATION	31
13. LATE PAYMENT	31
14. DEATH OF THE CONSULTANT	31
15. OWNER-CONSULTANT RELATIONSHIP	32
16. PROTECTION OF LIVES AND HEALTH	32
17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE AND CONTINUING INTEGRITY	32
18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS	34
19. COOPERATION WITH INVESTIGATIONS	35
20. FALSE STATEMENTS/INFORMATION	36
21. INVALID PROVISIONS	37
22. CONFLICTING TERMS	37
23. 2005 PROCUREMENT LOBBYING LAW	37
24. NONCOMPLIANCE	38

1. LABOR LAW PROVISIONS

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

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

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

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

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

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

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

2. NONDISCRIMINATION

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

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

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

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

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

4. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

5. CONTRACT DEEMED EXECUTORY

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

6. OWNERSHIP OF DOCUMENTS

N/A.

7. TERMINATION OR SUSPENSION

A. Termination for Cause

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

B. Termination for Convenience or Suspension of Project

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

C. Payment In Case Of Termination or Suspension of Project

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

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

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

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

8. SUSPENSION OR ALTERATION

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

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

N/A.

11. GOVERNMENT PROVISIONS

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

12. COOPERATION

N/A.

13. LATE PAYMENT

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

14. DEATH OF THE CONSULTANT

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

15. OWNER-CONSULTANT RELATIONSHIP

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

16. PROTECTION OF LIVES AND HEALTH

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

17. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE

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

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

- C. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid the OWNER in making an award determination.
- D. The CONSULTANT shall at all times during the Contract term remain responsive and responsible. The CONSULTANT shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract term. The CONSULTANT agrees, if requested by the President of the OWNER or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The CONSULTANT shall immediately notify OWNER of any material or adverse information pertaining to the CONSULTANT or any Subconsultant, regardless of tier.
- E. The President of the OWNER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of the OWNER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- F. Notwithstanding any other provision of this Contract, upon written notice to the CONSULTANT, and a reasonable opportunity to be heard with the appropriate OWNER officials or staff, the Contract may be terminated by the President of the OWNER or his or her designee at the CONSULTANT's expense where the CONSULTANT is determined by the President of the OWNER or his or her designee to be non-responsible. In such event, the President of the OWNER or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.
- G. In selecting a Subconsultant or Subcontractor, the CONSULTANT shall consider whether the proposed Subconsultant or Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The CONSULTANT shall not

Subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The CONSULTANT shall not subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The CONSULTANT shall not subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

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

18. PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS

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

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

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

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

19. COOPERATION WITH INVESTIGATIONS

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

authorized representative of the OWNER (“Representative”).

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

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

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

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

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

20. FALSE STATEMENTS/INFORMATION

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

21. INVALID PROVISIONS

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

22. CONFLICTING TERMS

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

23. 2005 PROCUREMENT LOBBYING LAW

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

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

24. NONCOMPLIANCE

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

DRAFT