

DASNY

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

Contract for Design-Build Work

CORPORATE HEADQUARTERS

515 Broadway
Albany, New York
12207-2964

T 518.257.3000

F 518.257.3100

NEW YORK OFFICE

28 Liberty Street
New York, New York
10005

T 212.273.5000

F 212.273.5121

BUFFALO OFFICE

539 Franklin Street
Buffalo, New York
14202-1109

T 716.884.9780

F 716.884.9787

www.dasny.org

CONTRACT FOR DESIGN-BUILD WORK

This Contract for Design-Build Work (the “Contract”) is hereby made and entered into as of this day of _____, 2023 (“Effective Date”) by and between the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK**, having its principal office and place of business as 515 Broadway, Albany, New York 12207-2964, hereinafter referred to as the Owner, and **[CONTRACTOR NAME]**, whose office is located at **[ADDRESS]**, hereinafter referred to as the Contractor for the design, engineering, procurement, construction, start-up, testing, and commissioning of the Wings A & B Renovation, including all related appurtenances as more fully defined below and in the Contract Documents (the “Work”) at the OPWDD Finger Lakes Developmental Disabilities Service Office, herein referred to as “FLDDSO”, located at 620 Westfall Road, Rochester, New York 14620. Owner and Contractor may hereinafter be referred to individually as “Party” and collectively as “Parties”; and

WHEREAS, the Owner has requested the Contractor to design, engineer, procure, construct, assemble, start-up, test and commission Wings A & B Renovation, hereinafter referred to as the Project and as more fully described in the Contract Documents; and

WHEREAS, the Owner and the Contractor have agreed upon the General Conditions for the Work for the Project attached hereto as Exhibit A (“General Conditions”); and

WHEREAS, the Owner and the Contractor have agreed upon the General Requirements for the Work attached hereto as Exhibit B (“General Requirements”); and

WHEREAS, the Owner and the Contractor have agreed upon a Scope of Work for the Project attached hereto as Exhibit C (“Scope of Work”); and

WHEREAS, Contractor and Owner have agreed that the total cost for the design, engineering, procurement, construction, assembly, start-up, testing and commissioning of the Project shall not exceed the Guaranteed Maximum Price (as hereinafter defined), and have otherwise negotiated mutually acceptable terms and conditions for Design-Builder to provide design-build services, including a Date of Completion for the Project, which terms and conditions are hereinafter set forth; and

WHEREAS, Owner desires to engage Contractor, and Contractor agrees to be so engaged by Owner to design, engineer, procure, construct, assemble, start-up, test and commission the Work; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing premises and of the mutual covenants hereinafter contained, the Owner and the Contractor hereby mutually covenant and agree as follows:

ARTICLE I: THE WORK

A. **Engagement of Contractor.** Owner hereby engages Contractor to perform all of the Work in accordance with the requirements of the Contract Documents for [GMP] on or before the date of Substantial Completion, and Contractor hereby accepts such engagement.

Joint and Several Liability. _____ and _____, each individually agree that each company is jointly and severally liable for all of the obligations, covenants, representations, warranties, guarantees, and indemnities of the Design-Builder/Contractor under this Contract.

B. **Engineering, Procurement, Installation, Management and Construction Concept.** Contractor will coordinate and perform all of the Work so that it results in Contractor completing all of the Work as set forth in, or reasonably inferable from, the Contract Documents, for Owner's use, within the Contract Time and for the Contract Sum. Contractor acknowledges that Owner is relying on the expertise of Contractor to furnish the completed Work in accordance with the requirements of the Contract Documents. Contractor has reviewed the Contract Documents, agrees that they are sufficient to perform all of the Work, and agrees that Contractor will not make any claims for additional costs or extensions of the Milestone Dates based on the content of the Contract Documents being insufficient to complete the Work.

C. **Project Description.** The Contract Documents (as defined in General Conditions, Section 1.01) set forth the Contractor's obligations with respect to the Work. In accordance with the Contract Documents for the Work, the basic services the Contractor shall provide include, but are not limited to, the following: safety programs; Design Work; procurement services; construction and erection services; project management; cost estimating; scheduling; cost and schedule reporting and updating; materials and methods value engineering; materials and equipment management; expediting and transportation management; quality management programs; permitting responsibilities; general contracting services; construction superintendent services; craft labor services; start-up and commissioning; performance testing; training; and maintenance information.

D. **Single Point of Responsibility.** Contractor is responsible for the timely and proper supervision, coordination, execution, management, and inspection of all of the Work, including any Work provided by its Subcontractors. All Work shall be in compliance with the Contract Documents. The Contractor shall provide and perform all Work required by the Contract Documents of every kind or nature whatsoever required and all other things necessary to complete in a proper and workmanlike manner all of the Work, including but not limited to, the Design Work, procurement, manufacture, installation, assembly, construction, start-up, commissioning, and testing in strict accordance with the Contract Documents.

1. **Notification of Owner Action.** Contractor shall promptly notify Owner in writing that a specific action must be taken by Owner whenever Contractor believes that Owner's lack of action (including any review, response or approval) may delay Contractor's execution of the Work or impact the Contract Sum.
2. **Contractor Obligations.** Unless otherwise permitted by the Contract Documents, Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents as a result of any activities or duties of Owner, including any action or inaction, or due to tests, reviews, inspections, or approvals required or performed by persons or parties other than Contractor.
3. **Responsibility.** Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, its Subcontractors, and their agents and employees, and other persons performing any of the Work or supplying any equipment or material for the Work under a Subcontract with Contractor.
4. **Administration/Standard of Care.** The relationship between Owner and Contractor is one of trust and confidence, with Owner relying upon Contractor for fair and honest, as well as experienced and competent judgments and opinions regarding all aspects of the Project. Contractor shall perform the Work required by the Contract Documents, or if not otherwise specified in the Contract Documents, in accordance with the applicable standard of care, Good Design-Build Practice, or the quality generally recognized and accepted within the construction industry. Contractor shall fully cooperate with Owner, Owner's Design-Professional, and Owner's Separate Contractors in furthering the interests of Owner with respect to the Project. Contractor agrees to furnish efficient business administration, project management, and project oversight, and to use its best efforts to furnish at all times an adequate supply of qualified design professionals and procurement, construction, safety and quality assurance professionals, workers, craft labor, supervision,

construction equipment, and materials. Contractor shall perform the Work in the most expeditious and economical manner consistent with good design and construction practices.

5. **Financial Assurance.** Prior to the execution of the Contract and at Owner's request during its term, Contractor shall submit, for Owner's review, its most recent three (3) years of complete (audited), annual financial statements (and any quarterly financial statements released after the most recent annual financials), or such other financial information as may be available and requested by Owner, in order to establish the Contractor's creditworthiness. If Contractor's creditworthiness has materially worsened from the execution date of this Contract, Owner may provide Contractor with written Notice requesting performance assurance in a mutually agreed form and amount. Failure of Contractor to provide the mutually agreed performance assurance within a mutually agreed time period shall be a material breach under the Contract. In the event that the Contractor is a joint venture, then the parent entities of each respective joint venture entity must also comply with these requirements.

E. **Commencement of Work and Notices to Proceed.** Contractor shall commence the Work under this Contract a date agreed to by Owner, after receipt of the applicable Notice to Proceed. Unless otherwise authorized in writing by Owner, Contractor shall not commence any Work, nor shall any Work be deemed to have been commenced under this Contract, prior to the Date set forth in the Notice to Proceed. Owner, at its discretion, may release Contractor to commence only a portion of the Work, and Contractor shall proceed with only that portion of the Work until Owner issues a Notice to Proceed for all or part of the remaining Work.

1. **Sufficiency of the Contract Documents.** The Scope of Work and Bridging Documents are the agreed upon Work that the Contractor will perform as part of its Contract and includes documents, such as specifications and drawings, developed before and subsequent to the Effective Date that are incorporated into the Contract as Contract Documents. Contractor has reviewed the Contract Documents as further defined in the Definitions section of the General Conditions, including the Scope of Work and Bridging Documents, and agrees that the activities included therein are sufficient to perform all of the Work for the Project. Contractor further agrees that, after the Effective Date, it will not make any claims for additional costs or extensions of the Milestone Dates based on the content of the Scope of Work or Bridging Documents being insufficient to complete the Work.

F. **Contractor's Work.** The Contractor's Work shall include, but not be limited to, all Articles of this Contract, all Work enumerated in the Contract Documents, including, but not limited to, the General Conditions, the General Requirements, the Scope of Work in Exhibit C, the Bridging Documents attached hereto as Exhibit D, and all obligations imposed upon the Contractor by the Contract Documents, which is attached to and made a part hereof.

ARTICLE II: EXTRA WORK

A. The Owner may make changes to the Work by adding to or deducting from the Work in accordance with the provisions of General Conditions, Article 7 ("Changes in the Work").

B. **Authorization for Changes in the Work.** Prior to the execution of any additional or changed Work requested by Owner or Contractor under General Conditions, Article 7, Contractor must receive written authorization from Owner in accordance with General Conditions, Article 7. Additional Work performed by Contractor without a written authorization from Owner shall be performed at Contractor's sole risk.

ARTICLE III: OWNER'S SEPARATE CONTRACTORS

The Owner may retain Owner's Separate Contractors to furnish services throughout the term of this Contract, and the Contractor shall cooperate with Owner's Separate Contractors.

ARTICLE IV: PROVISION FOR PAYMENT

A. The Contractor's total compensation for performance of the Work under this Contract shall be _____ Dollars (\$00) (the "GMP"), subject to adjustment of such amount, if any, pursuant to the provision of General Conditions, Article 7. The GMP is the absolute maximum of the total amounts payable by Owner to Contractor.

B. Payments for Contractor's Work shall be made monthly in accordance with this Article IV herein, General Conditions, Article 8 (Payment), and General Requirements, Section 012900 (Payment Procedures) in proportion to Work performed and approved by Owner. Payments shall be requisitioned on the Owner's form (Contractor Application for Payment), with an accompanying copy of certified payrolls for the Contractor and its Subcontractors and other appropriate backup. Contractor's and its Subcontractors' certified payrolls shall show the names and rates of pay of all personnel performing the Work during the payment period, and their position classification. Said form must be included as a part of any Contractor Application for Payment related to the Work. Payment shall be made in accordance with the approved Schedule of Values (Exhibit E - Schedule of Values), which summarizes payments to be made under the payment provisions of the Contract Documents after the applicable Work is completed. C. The Contractor shall file no mechanic's or materialman's lien or maintain any claim against the Owner's funds, real estate, property, or improvements for or on account of any work done, labor performed, or materials furnished under this Contract. The Contractor shall use its best efforts to prevent the placement of any liens on any Owner funds, real estate, property, or improvements by Contractor's Subcontractors or their employees. If Contractor fails to prevent the filing of such liens or fails to bond against such liens, Contractor shall be responsible and liable for, and shall indemnify Owner for all of Owner's costs, expenses (including attorneys' fees), liabilities, damages, fees, penalties, judgments, and settlement costs arising either directly or indirectly from the placement of such lien. The obligations and liabilities of Contractor under this Article shall not apply where the basis for such lien relates to amounts invoiced by Contractor that are either not paid or are disputed by Owner.

ARTICLE V: FINAL PAYMENT AND RELEASE

A. Upon satisfactory completion by the Contractor and acceptance by the Owner of all Work required pursuant to the Contract Documents, or all Work performed prior to the termination of the Contract if so terminated, final payment shall be made to the Contractor, subject to the provisions of the Contract Documents allowing Owner to withhold payment to Contractor.

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

ARTICLE VI: CONSTRUCTION GENERAL CONDITIONS AND GENERAL REQUIREMENTS

The Owner's General Conditions and General Requirements, attached hereto as Exhibits A and B, respectively, are Contract Documents and shall apply to the Work of this Contract and to all Work performed by the Contractor and its Subcontractors. Defined terms used herein and not otherwise defined shall have the meaning ascribed to them in the General Conditions. Terms capitalized in this Contract, the General Conditions, and the General Requirements shall be interpreted as being mutually explanatory and incorporated by reference into each of those respective documents.

ARTICLE VII: CONTRACTOR'S SUBCONTRACTS

A. Subcontracts with Subcontractors. To the extent commercially practicable, Contractor agrees to bind every Subcontractor with whom Contractor enters into a Subcontract to all provisions of the Contract Documents that are applicable to the Work to be performed by the Subcontractor. Contractor shall provide Owner a true and

complete copy of the following: (i) each specification issued by Contractor for those Subcontracts that Contractor will enter into for the Project; and (ii) upon Owner's request, each Subcontract entered into by Contractor for the Project, either promptly upon execution of the Subcontract or at finalization prior to execution of the Subcontract. Contractor shall also incorporate the language of Subarticles VII 1 - 4, as set forth below, into each Subcontract entered into with the proposed Subcontractors:

1. The Owner is "intended Third-Party Beneficiary of this agreement."
2. Upon default of the Contractor under the Owner/Contractor Contract, the applicable Subcontractor shall be required to continue to perform all its respective covenants and obligations for the benefit of the Owner.
3. Subcontractor of any tier shall be bound to Contractor by the applicable terms of the Contract Documents between Owner and Contractor and shall assume toward Contractor all obligations and responsibilities which Contractor, by those documents, assumes toward Owner.
4. Owner may elect at any time or from time to time, including in connection with the termination of the Contract between Owner and Contractor, to have this Subcontract assigned from the Contractor to Owner or any entity designated by Owner, and the parties agree that such assignment shall be effective upon the delivery of a notice of such election by Owner to the Subcontractor.

Failure to comply with the requirements contained in this Section A shall render the Contractor in default of this Contract.

B. Contractor's design professional Subcontractors shall be responsible for the performance of all design and construction services which by law are required to be performed by licensed professional architects or engineers in New York State. In accordance with paragraph A of this Article VII, the Owner shall be a named third-party beneficiary of the Contractor's Subcontract with the Contractor's design professional Subcontractors, and Owner shall be entitled to rely upon all of the services performed by the Contractor's design professional Subcontractors.

C. The third-party beneficiary language identified in paragraph A.1. of this Article VII and required to be included in all Subcontracts, and as further identified in paragraph B of this Article VII, shall provide only the Owner with third-party beneficiary status and shall not be construed to create any sort of contractual relationship with the Owner that inures to the benefit of any Subcontractor.

ARTICLE VIII: TIME OF COMPLETION AND LIQUIDATED DAMAGES

A. The Contractor shall achieve Substantial Completion of all of the Work on or before February 6, 2026.

B. If Contractor has not completed the Work on or before the required date of Substantial Completion, as identified in Article VIII, Section A (above), Liquidated Damages may be assessed for each and every calendar day the Contractor's Work has not achieved Substantial Completion at the rate of five thousand and 00/100 dollars (\$5,000) per day. In the event that Substantial Completion is not achieved on or before February 6, 2026, Liquidated Damages may be assessed for each and every calendar day the Contractor's Work has not achieved Substantial Completion at the rate of ten thousand and 00/100 dollars (\$10,000) per day.

C. The Contractor hereby acknowledges that time is of the essence with respect to performance of the Work hereunder, including meeting all of the Milestone Dates identified in Exhibit F.

This Contract for Design-Build Work may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SIGNATURES

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

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

By _____

Title: Authorized Officer

Date: _____

Firm Name
Firm Address
Firm Address

By _____

Authorized Officer/Signatory

Title _____

Date: _____

SAMPLE

NEW YORK STATE ACKNOWLEDGEMENT – DASNY

State of New York

County of _____) ss:

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 – Contractor/Consultant

State of New York

County of _____) ss:

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*

EXHIBIT A

GENERAL CONDITIONS OF THE WORK

SAMPLE

EXHIBIT B

GENERAL REQUIREMENTS OF THE WORK

SAMPLE

EXHIBIT C

SCOPE OF WORK

(To be developed and provided by Contractor for Owner review prior to the Execution Date.)

SAMPLE

EXHIBIT D

BRIDGING DOCUMENTS

(Provided by Owner as part of the RFP.)

SAMPLE

EXHIBIT E

SCHEDULE OF VALUES

Payments for the Work shall be made monthly in proportion to the Work performed and approved by the Owner. Payments shall be requisitioned on the Owner's form, **CONTRACTOR'S APPLICATION FOR PAYMENT**, with accompanying backup. Only said form shall be used for reimbursement of services.

EXHIBIT F

MILESTONE DATES

Substantial Completion of all of the Work on or before February 6, 2026

SAMPLE

EXHIBIT G

DRUG AND ALCOHOL TESTING

SAMPLE