

2026/27 Request for Qualifications for Professional Services Term Consultants

CIN: EXO.26.002

**Olympic Regional Development Authority
37 Church Street
Lake Placid, New York 12946**

ADDENDUM 1

**Presented By:
Olympic Regional Development Authority
Office of Environmental, Planning & Construction
37 Church Street
Lake Placid, New York 12946**



ATTACHMENT E

SAMPLE TERM CONSULTANT PROFESSIONAL SERVICES STANDARD FORM OF AGREEMENT



Term Consultant Professional Services Standard Form of Agreement

This AGREEMENT made this ___ day of MONTH 202X, by and between the New York State Olympic Regional Development Authority whose office address is 37 Church Street, Lake Placid, NY 12946 (hereinafter referred to as “ORDA”), and _____. (hereinafter referred to as “CONSULTANT”), whose office address is _____.

WHEREAS, ORDA desires, and CONSULTANT is willing to provide, Professional Design Services for ORDA as presented in ORDA’s 202X/2X Request for Qualifications – Professional Services Term Consultants and as further detailed in the Project Scope of Services agreements and/or Work Authorization forms issued to CONSULTANT in furtherance of the Project and in accordance with the terms of this AGREEMENT.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

A. TERM

The term of this AGREEMENT shall be for one (1) year (the “Initial Term”), with the option of four (4) annual renewals (each a “Renewal Term”) upon the mutual agreement of ORDA and CONSULTANT. In the event that either party desires to renew this AGREEMENT, it shall provide written notice of its desire to renew the AGREEMENT to the other party no later than thirty (30) days prior to the end of the then current Term.

B. THE CONSULTANT SERVICES

1. Except as otherwise expressly provided in this AGREEMENT or otherwise authorized in writing by Owner, in performing the Services and incurring expenses under this AGREEMENT, CONSULTANT shall operate as, and have the status of, an independent contractor and shall not act as agent or be an agent of ORDA. As an independent contractor, CONSULTANT shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for CONSULTANT’s personnel engaged in the performance of the Services.
2. CONSULTANT shall not employ, contract with, or use the services of any consultant without obtaining the prior written approval of ORDA.
3. No provision of this AGREEMENT shall be construed as an AGREEMENT between ORDA and any consultant to CONSULTANT or with any person, firm or corporation employed by, contracted with or whose services are utilized by CONSULTANT.
4. The foregoing provisions regarding consultants shall not dilute in any way CONSULTANT’S responsibility to perform the services set forth in this AGREEMENT at the compensation set forth

herein or in any attachments to this AGREEMENT. However, if ORDA directs CONSULTANT in writing to obtain the services of specialists or consultants not normally required for projects of comparable type, ORDA will compensate CONSULTANT in accordance with the terms of this AGREEMENT.

5. **Ownership of Documents:** The plans, drawings, reports, renderings, models, and other documents (“Instruments of Service”) to be prepared and furnished by CONSULTANT pursuant to this Agreement shall be the property of ORDA. ORDA shall have a license to use any intellectual property of CONSULTANT which is already in existence at the time this Agreement is signed (“CONSULTANT IP”) delivered in connection with a Project for the purposes of the Project only. Without in any way limiting the foregoing, ORDA expressly reserves the right to make any or all of the documents, including electronic files, available to bidders and contractors. CONSULTANT shall not publish or disseminate to third parties information pertaining to the PROJECT, or any part or aspect thereof, without first obtaining written approval from ORDA for such publication or dissemination and of the format and content thereof. Rights granted by CONSULTANT under this AGREEMENT will vest in ORDA upon fulfillment of all payment obligations set forth in this AGREEMENT.

Notwithstanding the foregoing, in the event that ORDA uses all or a substantial portion of the final working drawings for the construction of another project, ORDA shall compensate CONSULTANT for such use and in such amount as it deems fair and reasonable. In the event of such use, ORDA shall remove CONSULTANT’s name and seal from the documents and CONSULTANT shall have no liability or responsibility for such use, and ORDA will release, indemnify, defend and hold harmless CONSULTANT and its Sub-consultants from and against any and all claims, demands, suits, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys’ fees and costs of litigation) arising from such reuse.

Notwithstanding any provision herein, any standard portions of any models, drawings, and specifications, and any CONSULTANT IP, which may be shared with ORDA during the performance of work under this Agreement, shall remain the intellectual property of CONSULTANT.

6. At any time during the term of this AGREEMENT CONSULTANT shall, if so directed in writing by ORDA, change or modify the approved Scope of Services for the PROJECT and the CONSULTANT shall be compensated for such changes and modifications in accordance with terms of this AGREEMENT. No such direction shall be deemed to constitute a breach of this AGREEMENT.
7. All personnel assigned to the PROJECT by CONSULTANT shall be required to cooperate fully with personnel assigned to the PROJECT by ORDA. In the event CONSULTANT’S personnel fail to cooperate, CONSULTANT shall relieve them of their duties on the PROJECT upon the written request of ORDA.
8. **Compensation** - ORDA shall compensate CONSULTANT for all services rendered at the amount detailed in the Scope of Services. Reimbursable Expenses shall be marked-up no more than 10% above CONSULTANT’s actual cost. Meals, Travel and Lodging are not subject to mark-up.
9. **Additional Compensation** - If ORDA directs CONSULTANT to obtain the services of specialists or consultants not normally required, ORDA shall reimburse CONSULTANT for the actual costs incurred by them for such services, plus a sum equal to 10% thereof, provided both the consultant or the supplier of the services and the cost are approved in writing in advance by ORDA.

10. CONSULTANT shall maintain complete detailed and accurate cost and accounting records of all costs. During the term of this AGREEMENT and at any time within six (6) years thereafter, CONSULTANT shall make such records available to ORDA or the STATE OF NEW YORK (the "STATE") or their authorized representatives for review and audit in such place or places as may be mutually agreed by the parties. If ORDA authorized CONSULTANT to retain the services of consultants or subcontractors for which CONSULTANT will be entitled to payment hereunder, CONSULTANT agrees to include in all contracts with such consultants and subcontractors a requirement that they maintain complete, detailed, and accurate cost and accounting records as to all their costs relating to the services and/or materials furnished by them under such contracts and that during the term of this AGREEMENT and at any time within six years thereafter if requested by ORDA they will make such records available to ORDA or the STATE or their authorized representatives for review and audit at such place or places as may be mutually agreed by the parties. If all or any part of such records are not maintained by CONSULTANT, its consultants or subcontractors, or made available to ORDA or the STATE as provided herein, any item not supported by such records shall, at the election of ORDA, be disallowed and, if payment therefore has already been made, CONSULTANT, upon demand, shall refund to ORDA the amount so disallowed. Payments to CONSULTANT shall in no way affect CONSULTANT'S obligations hereunder or the right of ORDA to obtain a refund of any payment to CONSULTANT which was in excess of that to which they were lawfully entitled. The STATE and/or ORDA, whichever is applicable, shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) CONSULTANT shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable and in accordance with the grounds for non-disclosure under the Statute. CONSULTANT agrees that neither ORDA nor the STATE shall have any liability for records that are compelled to be released pursuant to law either by virtue of an administrative determination that such records are not exempt from disclosure under the Statute, or by virtue of a judicial determination that compels disclosure. Nothing contained herein shall diminish or in any way adversely affect, the STATE's or ORDA's right to discovery in any pending or future litigation.
11. **The Application for Payment** - All applications for payment whether for COMPENSATION or additional compensation shall be made no more frequently than every thirty (30) days. Any additional compensation to which CONSULTANT may be entitled under this AGREEMENT shall be itemized, supported by accurate documentation, including receipted bills for expenditures made by CONSULTANT and shall extend all hours and rates into dollar amounts. Applications for payment of additional compensation shall be submitted together with applications for payment of COMPENSATION under this AGREEMENT. ORDA reserves the right to request any and all documentation necessary to support applications for payment, and CONSULTANT agrees to comply with such requests. ORDA may, in its sole discretion, deny applications for payment that are not supported by proper documentation.
12. For all documents, drawings, specifications, models or other items requiring ORDA's review and/or approval, ORDA will provide review comments of said items at the scheduled submissions as defined by the Scope of Services. Comments will be in written form either as an 8 ½ x 11 narrative or a marked-up set of submission documents. CONSULTANT will timely respond to all comments in written form, and revisions to the documents will be made based upon mutual agreement between ORDA and CONSULTANT. ORDA comments will be consistent with programmatic and budget requirements, and with previous comments and approvals. CONSULTANT will revise the documents accordingly if consistent with the program and budget requirements, and previous comments. If CONSULTANT is unable to comply with written instructions, and/or marked-up project document review sets supplied by ORDA, CONSULTANT

shall notify ORDA in writing of this fact as soon as is practicable under the circumstances. If ORDA provides comments, or requests revisions that are in conflict with programmatic or budget requirements, or with previous comments and approvals, required revisions will be treated as an additional service consistent with this AGREEMENT, and CONSULTANT shall be compensated in accordance with the Scope of Services.

C. INSURANCE

CONSULTANT shall procure and maintain in full force and effect during the term of this AGREEMENT, insurance coverages and types as specified in Attachment B hereto, issued to and covering damage for liability imposed on CONSULTANT 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 the AGREEMENT. CONSULTANT shall comply with ORDA's General Liability and Workers Compensation and Disability Insurance Requirements. CONSULTANT shall supply any certificates of insurance required by ORDA and adhere to any additional requirements concerning insurance outlined therein. The terms and provisions of Attachment B are incorporated by reference as if fully restated herein.

D. STANDARD OF CARE

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of its services as is ordinarily possessed and exercised by a consultant practicing in the same disciplines and performing services of the same or substantially similar nature as are required by this Agreement and any applicable Scope of Work or Work Authorization ("Standard of Care").

E. DISPUTES

1. In the event of a dispute between ORDA and CONSULTANT arising out of or related to this AGREEMENT or any attachments hereto, to include Scope of Work or Work Authorizations issued pursuant to and in furtherance of this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute informally, each party may, upon the mutual agreement of both parties, nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. In such circumstances, the aggrieved party shall notify the other party in writing of the item or items in dispute, providing enough specificity to apprise the other party of the nature of the dispute. The parties shall then meet or conference at a mutually agreeable place and time, and attempt to negotiate the disputed item or items in good faith. In the event that a mutually agreeable or satisfactory result is unable to be reached, nothing herein contained shall be construed as limiting a party in exercising its contractual rights or seeking any remedies available to them under the law.
2. No Arbitration: Should such negotiations provided for in the preceding paragraph fail, disputes involving this AGREEMENT, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

F. TERMINATION

1. Dissolution or Bankruptcy of CONSULTANT

In the event of the dissolution or bankruptcy of CONSULTANT, ORDA may immediately terminate this AGREEMENT without further liability to CONSULTANT, except for obligations to pay outstanding sums owed, and all work, drawings, specifications, reports, and other data and records pertaining to the PROJECT that are in the custody or control of CONSULTANT shall be delivered to ORDA, and ORDA shall pay the legal representative of CONSULTANT all amounts due and owing by ORDA to CONSULTANT, to the date of termination, in accordance with the provisions of this AGREEMENT.

2. **Right of ORDA to Terminate, Postpone, etc.**

a. Right of ORDA to Terminate, Postpone, etc.

At any time during the effectiveness of this AGREEMENT, ORDA shall have the right with or without cause, upon ten days written notice to the CONSULTANT, to terminate this AGREEMENT in whole or in part or to postpone, delay, suspend or abandon all or any part of the PROJECT, and in the event of such termination, postponement, delay, suspension or abandonment the CONSULTANT shall deliver to ORDA all work, drawings, specifications, reports and other data, records and materials in its custody or control pertaining to the PROJECT, and ORDA shall pay to the CONSULTANT all amounts due and earned to the time of termination in accordance, postponement, delay, suspension or abandonment, in accordance with the provisions of this AGREEMENT. Such termination, postponement, delay, suspension or abandonment shall not give rise to any cause of action against ORDA for damages, loss of profits, expenses or other remuneration of any kind.

Notwithstanding any other provision of this AGREEMENT, if such termination, postponement, delay, suspension or abandonment is made necessary because of the CONSULTANT'S failure to fulfill its obligations under this AGREEMENT or any other fault of the CONSULTANT, ORDA may withhold payment of all or any part of any monies which otherwise may be payable to the CONSULTANT under this AGREEMENT and apply such monies toward any reasonable and unmitigatable damages or expenses sustained by ORDA as a result of such failure including, without limitation, any excess costs incurred by ORDA in completing the PROJECT by the use or employment of other consultants or otherwise.

b. Right of the CONSULTANT to Terminate.

At any time during the effectiveness of this AGREEMENT, the CONSULTANT shall have the right, upon sixty (60) days written notice to ORDA. In the event of such termination ORDA shall pay to the CONSULTANT all amounts due and earned to the time of termination, in accordance with the provisions of this AGREEMENT.

G. LIABILITY OF CONSULTANT

1. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless ORDA and its agents, directors, officers and employees from and against any and all damages, losses and expenses resulting from third party claims, including but not limited to reasonable attorneys' fees, defense costs and legal costs in addition to any judgement or settlement incurred, arising out of or resulting from CONSULTANT's negligent acts or omissions, or willful misconduct, in its performance under this AGREEMENT and/or the Services provided hereunder, or the negligent acts or omissions, or willful misconduct of CONSULTANT's agents, servants, employees, officers, consultants, or subcontractors, or by reason of liability imposed by operation of law, regardless of whether such claim, damage, loss or' expense is caused in part by a party indemnified under this AGREEMENT. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article. Furthermore, CONSULTANT shall indemnify and hold ORDA harmless from and against any and all liabilities, damages, lawsuits, claims, and expenses (including reasonable attorney's fees and court costs) which ORDA may sustain or be subject to owing to any infringement of any claimed copyright or patent right of designs, plans, drawings or specifications furnished by CONSULTANT, its consultants or subcontractors, to ORDA.
2. Except as otherwise provided herein, in claims against any person or entity indemnified under this

Article by an employee of CONSULTANT, anyone directly or indirectly employed by them, or anyone for whose acts CONSULTANT may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or other benefits payable by or for CONSULTANT under worker's compensation acts, disability benefit acts, or other employee benefit acts.

3. This Article creates no limitation on the right to common-law indemnification. The indemnity provided for herein shall be deemed in addition to and in no way a limitation upon ORDA's right of common-law indemnification from CONSULTANT.
4. Nothing contained in this AGREEMENT shall create or give to third parties any claim or right of action against CONSULTANT or ORDA beyond such as may legally exist without regard to this AGREEMENT.
5. CONSULTANT shall not be responsible for:
 - a. Construction means, methods, techniques, sequences, procedures, or safety precautions and programs utilized by the contractor and any subcontractors in connection with the PROJECT; or
 - b. The failure of any contractor, subcontractor, vendor, or other PROJECT participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to ORDA or to comply with federal, state, or local laws, regulations, and codes; or
 - c. Procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT hereunder.

H. GENERAL PROVISIONS

1. ORDA reserves the right to employ other consultants in connection with the Services hereunder.
2. Notices: Whenever it is provided in this AGREEMENT that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified at the beginning of this AGREEMENT, or at such other addresses as either party may, from time to time, designate by written notice to the other, and unless otherwise mutually agreed between the parties in writing, notice shall be deemed to have been properly given and shall be deemed effective upon receipt when (i) delivered by express overnight mail delivery service with receipt for delivery or (ii) when deposited in the United States mail, postage prepaid, certified with return receipt requested. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received shall constitute receipt.
3. Entire AGREEMENT: This AGREEMENT and the Scope of Services, and any other attachments, exhibits, or addenda, constitutes the entire AGREEMENT between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid, and this AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto and approved in the same manner as this AGREEMENT.
4. Captions: The captions and/or headings contained in this AGREEMENT are intended for convenience and reference purposes only and shall in no way be deemed to define, limit or describe the scope or intent of this AGREEMENT, or any provision thereof, nor in any other way affect this AGREEMENT.

5. Attachments: Any and all attachments, exhibits, or addenda, including but not limited to ORDA's Standard Contract terms, Scope of Work, and Work Authorization agreements appended hereto are incorporated by reference as if fully restated herein and shall be given the same force and effect as if fully restated herein.
6. Waivers: No waiver of any provision of this Agreement or the breach thereof shall constitute a continuing waiver, or a waiver of any other provision of this Agreement or the breach thereof, and no such waiver shall be effective unless expressed in writing signed by the party against whom enforcement is sought.
7. Survival: All rights and obligations contained in this Agreement, which by their nature or effect are required or intended to be kept, observed, or performed after the termination or expiration of this Agreement will survive and remain binding upon and for the benefit of the Parties, their successors, and permitted assigns. For the sake of clarity, these obligations include: obligations to pay; obligations to defend, hold harmless and/or indemnify; record keeping obligations; obligations to deliver the other party's property; and any and all warranties made, the duration of which will exceed the term of this Agreement.
8. Severability: In the event that one or more of the provisions of this Agreement shall for any reason be declared unenforceable by a court of competent jurisdiction, such provision(s) shall have no effect on the validity of the remainder of the Agreement, which shall then be construed as if such unenforceable provision(s) was never contained in the Agreement.

I. STATE EDUCATION LAW REQUIREMENTS AND COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

1. All Engineering, Surveying and Geological Services shall be performed in accordance with New York State Education Law Article 145 – Engineering, Land Surveying and Geology.
2. All Architectural Services shall be performed in accordance with the New York State Education Law Article 147 – Architecture.
3. CONSULTANT shall review laws, regulations, codes and standards in effect as of the date of this AGREEMENT that are applicable to CONSULTANT's services and performance and shall exercise professional care and judgment in accordance with the Standard of Care to design in compliance with requirements imposed by governmental authorities having jurisdiction over the PROJECT.

J. CONFIDENTIALITY

1. For purposes of this Article:
 - a. The term "Confidential Information" as used herein means all material and information, whether written or oral, received by CONSULTANT from or through ORDA or any other person connected with the PROJECT, or developed or otherwise received or obtained by CONSULTANT in connection with the PROJECT or the performance of Services under this Agreement. Confidential Information shall include, but not be limited to, samples, substances and other materials, conversations, correspondence, records, notes, reports and other documents, in draft or final form, including any documentation or data relating to the results of investigations, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations and/or comments relating thereto.
 - b. The term "CONSULTANT" as used in this Article includes all officers, directors, employees, agents, representatives and sub-consultants of CONSULTANT.

2. CONSULTANT shall mark all Confidential Information as “Privileged and Confidential” and shall keep all Confidential Information in a secure location within CONSULTANT’s offices. ORDA shall have the right, but not the obligation, to enter CONSULTANT’s offices for the sole purpose of inspecting the arrangements of CONSULTANT for keeping the Confidential Information secure. No inspection by ORDA shall relieve CONSULTANT of the responsibility for the performance of its obligations hereunder.
3. CONSULTANT shall hold the Confidential Information in trust and confidence, shall not disclose the Confidential Information or any portion thereof to any third party without the prior written consent of ORDA, and shall not use the Confidential Information or any portion thereof for any purpose whatsoever except in connection with the performance under this Agreement.
4. CONSULTANT shall notify ORDA immediately upon receipt by CONSULTANT of any request for Confidential Information. CONSULTANT is not prohibited by this Article from disclosing portions of the Confidential Information if, and to the extent that, such portions have become generally available to the public other than by an act or omission of CONSULTANT or any of its subcontractors, if disclosure of such portions is required by subpoena, warrant, court order, or statutory or regulatory obligation; PROVIDED, however, that, in the event that any third party, including but not limited to a governmental employee, officer or entity, requests all or a portion of the Confidential Information, CONSULTANT shall immediately notify ORDA and shall cooperate with ORDA in determining whether and how to respond to such request. This may include but may not be limited to CONSULTANT opposing such request and cooperating with ORDA in obtaining a protective order or other appropriate remedy unless and until ORDA in writing (i) waives compliance with the provisions of this Article or (ii) determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or ORDA waives compliance with this Article or determines disclosure is legally required, CONSULTANT shall disclose only such portions of the Confidential Information that, in the opinion of ORDA, it is legally required to disclose, and CONSULTANT shall use its best efforts to obtain from the party to whom the Confidential Information is disclosed written assurance acceptable to ORDA that confidential treatment will be accorded to such portions of the Confidential Information as are disclosed.
 - 4.a. Pursuant to Section 87 of the Public Officers Law (also known as the Freedom of Information Law (“FOIL”)), all records related to this PROJECT, including, but not limited to that of CONSULTANT's, that are in the possession of ORDA are subject to FOIL and presumptively open to public disclosure unless an exemption applies. CONSULTANT shall fully cooperate with ORDA’s FOIL Officer in the case of all FOIL requests of subject matter.
5. Each party to this Agreement agrees to comply with all laws applicable to that party’s obligations under the terms of this Agreement. This includes but is not limited to ORDA’s ethical obligations under the Public Officers Law, as well as its own ethics policies. ORDA acknowledges that CONSULTANT has an anonymous optional “Ethics Line” to which ORDA may report any suspected violation of law, regulation, code, or policy by CONSULTANT, its employees, agents, and/or contractors, during the term of this Agreement. ,
6. ORDA and CONSULTANT represent that they are not currently suspended, debarred, declared ineligible or voluntarily excluded by any federal or state entity, such that performance under the AGREEMENT is no longer possible. ORDA AND CONSULTANT shall notify the other party immediately if either party becomes suspended, debarred, declared ineligible or are voluntarily excluded by any federal or state entity such that performance under the AGREEMENT is no longer possible, and the party receiving such notice shall have the right to terminate the AGREEMENT in such event.

7. **Waiver of Damages:** CONSULTANT shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
8. **Standard Contract Terms:** This agreement shall be governed by the laws of the State of New York. Standard Clauses for New York State Contracts (Appendix A) apply.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first abovewritten:

FOR: _____

BY: _____

TITLE: _____

DATE: _____

AUTHORITY CERTIFICATION - In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

For the New York State Olympic Regional Development Authority

BY: _____
Ashley Walden, President & CEO

DATE: _____



Term Consultant Professional Services Standard Form of Agreement

This AGREEMENT is made as of the ____ day of MONTH, 202X, by and between the New York State Olympic Regional Development Authority (“Olympic Authority”), whose office address is 37 Church Street, Lake Placid, New York 12946, and _____ (“Consultant”), whose office address is _____.

WHEREAS, ORDA desires, and Consultant is willing to provide, Professional Design Services for ORDA as presented in ORDA’s 202X/2X Request for Qualifications – Professional Services Term Consultants and as further detailed in the Project Scope of Services agreements and/or Work Authorization forms issued to Consultant in furtherance of the Project and in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

A. TERM

The term of this Agreement shall be for one (1) year (the “Initial Term”), with the option of four (4) annual renewals (each a “Renewal Term”) upon the mutual agreement of the Olympic Authority and Consultant. In the event that either party desires to renew this Agreement, it shall provide written notice of its desire to renew the Agreement to the other party no later than thirty (30) days prior to the end of the then current Term. Collectively, the Initial Term and each Renewal Term shall be referred to herein as the “Term.”

B. THE CONSULTANT SERVICES

1. **Scope of Services** – Consultant agrees to provide the services as provided Work Authorization(s) issued during the Term of this Agreement in accordance with the terms of this Agreement (the “Services”).
2. **Independent Contractor** – Except as otherwise expressly provided in this Agreement or otherwise authorized in writing by the Olympic Authority, in performing the Services and incurring expenses under this Agreement, Consultant shall operate as, and have the status of, an independent contractor and shall not act as agent or be an agent of the Olympic Authority. As an independent contractor, Consultant shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for Consultant’s personnel engaged in the performance of the Services.
3. **Sub-Consultants** – Consultant shall not employ, contract with, or use the services of any consultant without obtaining the prior written approval of the Olympic Authority. No provision of this Agreement shall be construed as an Agreement between the Olympic Authority and any consultant to Consultant or with any person, firm or corporation employed by, contracted with or whose services are utilized by Consultant. The foregoing provisions regarding consultants shall not dilute in any way Consultant’s responsibility to perform the services set forth in this Agreement at the compensation set forth herein or in any attachments to this Agreement. However, if the Olympic Authority directs Consultant in writing to obtain the services of specialists or consultants not normally required for projects of comparable type, the Olympic

Authority will compensate Consultant in accordance with the terms of this Agreement.

4. **Ownership of Documents** - Consultant shall not publish or disseminate to any third party information pertaining to the Services, or any part or aspect thereof, without first obtaining written approval from the Olympic Authority for such publication or dissemination and of the format and content thereof.
5. **Compensation** - The Olympic Authority shall compensate Consultant for all services rendered at the amount detailed in the Work Authorizations. Reimbursable Expenses shall be marked-up no more than 10% above Consultant's actual cost.
6. **Additional Compensation** - If the Olympic Authority directs Consultant to obtain the services of specialists or consultants not normally required, the Olympic Authority shall reimburse Consultant for the actual costs incurred by them for such services, plus a sum equal to 10% thereof, provided both the consultant or the supplier of the services and the cost are approved in writing in advance by the Olympic Authority. Meals, Travel and Lodging are not subject to mark-up.
7. **Cost Documentation** – Consultant shall maintain complete detailed and accurate billing and accounting records of all costs. During the term of this Agreement and at any time within six (6) years thereafter, Consultant shall make such records available to the Olympic Authority or the State of New York (the "State") or their authorized representatives for review and audit in such place or places as may be mutually agreed by the parties. If the Olympic Authority authorizes Consultant to retain the services of consultants or subcontractors for which Consultant will be entitled to payment hereunder, Consultant agrees to include in all contracts with such consultants and subcontractors a requirement that they maintain complete, detailed, and accurate cost and accounting records as to all their costs relating to the services and/or materials furnished by them under such contracts and that during the term of this Agreement and at any time within six (6) years thereafter, if requested by the Olympic Authority, they will make such records available to the Olympic Authority or the State or their authorized representatives for review and audit at such place or places as may be mutually agreed by the parties. If all or any part of such records are not maintained by Consultant, its consultants or subcontractors, or made available to the Olympic Authority or the State as provided for herein, any item not supported by such records shall, at the election of the Olympic Authority, be disallowed and, if payment therefore has already been made, Consultant, upon demand, shall refund to the Olympic Authority the amount so disallowed. Payments to Consultant shall in no way affect Consultant's obligations hereunder or the right of the Olympic Authority to obtain a refund of any payment to Consultant which was in excess of that to which they were lawfully entitled.
8. **Applications for Payment** - All applications for payment whether for compensation or additional compensation shall be made no more frequently than every thirty (30) days. Any additional compensation to which Consultant may be entitled under this Agreement shall be itemized, supported by accurate documentation, including receipted bills for expenditures made by Consultant and shall extend all hours and rates into dollar amounts. Applications for payment of additional compensation shall be submitted together with applications for payment of compensation under this Agreement. The Olympic Authority reserves the right to request any and all documentation necessary to support applications for payment, and Consultant agrees to comply with such requests. The Olympic Authority may, in its sole discretion, deny applications for payment that are not supported by proper documentation.
9. **Approval of Documents** – For all documents or other items requiring the Olympic Authority's review and/or approval, the Olympic Authority will provide review comments of said items at the scheduled submissions as defined by the Work Authorizations. Consultant will timely respond to all comments in written form, and revisions to the documents will be made based upon mutual agreement between the Olympic Authority and Consultant. The Olympic Authority comments will be consistent with programmatic and budget requirements, and with previous

comments and approvals. Consultant will revise the documents accordingly if consistent with the program and budget requirements, and previous comments. If Consultant is unable to comply with written instructions, and/or marked-up project document review sets supplied by the Olympic Authority, Consultant shall notify the Olympic Authority in writing of this fact as soon as is practicable under the circumstances. If the Olympic Authority provides comments, or requests revisions that are in conflict with programmatic or budget requirements, or with previous comments and approvals, required revisions will be treated as an additional service consistent with this Agreement, and Consultant shall be compensated in accordance with the Work Authorizations.

C. INSURANCE

Consultant shall procure and maintain in full force and effect during the term of this Agreement all insurances as provided for in the Insurance Requirements attached hereto as Exhibit 1. Prior to the commencement of the Services, Consultant shall supply the Olympic Authority with proof of the insurances required under this section.

D. STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of its services as is ordinarily possessed and exercised by a consultant practicing in the same disciplines and performing services of the same or substantially similar nature as are required by this Agreement and any applicable Work Authorization ("Standard of Care").

E. DISPUTES

1. **Direct Negotiation** – In the event of a dispute between the Olympic Authority and Consultant arising out of or related to this Agreement, Work Authorizations issued pursuant to and in furtherance of this Agreement, and/or the performance of this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute informally, each party may, upon the mutual agreement of both parties, nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. In such circumstances, the aggrieved party shall notify the other party in writing of the item or items in dispute, providing enough specificity to apprise the other party of the nature of the dispute. The parties shall then meet or conference at a mutually agreeable place and time and attempt to negotiate the disputed item or items in good faith. In the event that a mutually agreeable or satisfactory result is unable to be reached, nothing herein contained shall be construed as limiting a party in exercising its contractual rights or seeking any remedies available to them under the law.
2. **No Arbitration** – Should such negotiations provided for in the preceding paragraph fail, disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but, instead, are subject to litigation in the Supreme Court of the State of New York in and for the County of Essex.

F. TERMINATION

1. **Dissolution or Bankruptcy of Consultant**
In the event of the dissolution or bankruptcy of Consultant, the Olympic Authority may immediately terminate this Agreement without further liability to Consultant, except for obligations to pay outstanding sums owed, and all work, reports, and other data and records pertaining to the Services that are in the custody or control of Consultant shall be delivered to the Olympic Authority, and the Olympic Authority shall pay the legal representative of Consultant all amounts due and owing by the Olympic Authority to Consultant, to the date of termination, in accordance with the provisions of this Agreement.
2. **Right of the Olympic Authority to Terminate**

At any time during the effectiveness of this Agreement, the Olympic Authority shall have the right

with or without cause, upon ten (10) days written notice to the Consultant, to terminate this Agreement in whole or in part, and in the event of such termination, the Consultant shall deliver to the Olympic Authority all work, reports and other data, records and materials in its custody or control pertaining to the Services, and the Olympic Authority shall pay to the Consultant all amounts due and earned to the time of termination in accordance with the provisions of this Agreement. Such termination shall not give rise to any cause of action against the Olympic Authority for damages, loss of profits, expenses, or other remuneration of any kind.

Notwithstanding any other provision of this Agreement, if such termination is made necessary because of the Consultant's failure to fulfill its obligations under this Agreement or any other fault of the Consultant, the Olympic Authority may withhold payment of all or any part of any monies which otherwise may be payable to the Consultant under this Agreement and apply such monies toward any reasonable and unmitigable damages or expenses sustained by the Olympic Authority as a result of such failure including, without limitation, any excess costs incurred by the Olympic Authority in completing the Services by the use or employment of other consultants or otherwise.

3. **Right of the Consultant to Terminate.**

At any time during the effectiveness of this Agreement, and provided that the Consultant is not in breach of this Agreement, the Consultant shall have the right, upon sixty (60) days written notice to the Olympic Authority, to terminate this Agreement. In the event of such termination, the Olympic Authority shall pay to the Consultant all amounts due and earned by the Consultant as of the date of termination, in accordance with the provisions of this Agreement.

G. LIABILITY OF CONSULTANT

1. Consultant shall be responsible for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Services pursuant to this Agreement or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of Consultant and its agents, consultants, subcontractors, guests, invitees, employees, servants, lessees and/or concessionaries and anyone directly or indirectly employed by any of them or anyone for whose acts any may be liable (each a "Responsible Party"), regardless of whether or not a claim arises under Labor Law Sections 200, 240 and/or 241, Industrial Code Rule 23 and/or common law negligence, or by reason of liability imposed by operation of law.
2. To the fullest extent permitted by law, Consultant shall defend, indemnify, hold harmless and release the Olympic Authority, the State of New York, the record owner of the real property on which the Services are being furnished and/or performed, any public benefit corporation, railroad or public utility whose property or facilities are affected by the Services, and/or their respective affiliates, members, partners, directors, officers, employees, consultants, contractors and/or agents (individually, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against any and all suits, claims, liabilities, fines, damages and/or any types of action whatsoever, including attorneys' fees, defense costs and legal costs, for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Services pursuant to this Agreement or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of any Responsible Party, or by reason of liability imposed by operation of law.
3. The Olympic Authority may retain such monies from the amount due Consultant as may be necessary to satisfy any claim for damages recovered against the Indemnified Parties. Consultant's obligation under this paragraph shall not be deemed waived by the failure of the Olympic Authority to retain the whole or any part of such monies due Consultant, or where such suit, action, damages, and/ or costs have not been resolved or determined prior to release of any

monies to Consultant under this Agreement.

4. The obligation of Consultant to indemnify the Indemnified Parties (1) shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits, including workers' compensation or other employee benefit acts, provided by Consultant, and (2) shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Indemnified Parties.
5. Consultant has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the Indemnified Parties. This obligation shall include the cost of attorneys' fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding. Notwithstanding the foregoing, the Olympic Authority reserves the right to join such action or proceeding, at its sole expense, when it determines there is an issue involving a significant public interest.
6. The obligation of Consultant to indemnify does not extend to those suits, claims, liabilities, fines, damages, and types of action which arise out of the sole negligence of an Indemnified Party.
7. This Article creates no limitation on the right to common-law indemnification. The indemnity provided for herein shall be deemed in addition to and in no way a limitation upon the Olympic Authority's right of common-law indemnification from Consultant.
8. Nothing contained in this Agreement shall create or give to third parties any claim or right of action against Consultant or the Olympic Authority beyond such as may legally exist without regard to this Agreement.

H. CONFIDENTIALITY

1. For purposes of this Article:
 - a. The term "Confidential Information" as used herein means all material and information, whether written or oral, received by Consultant from or through the Olympic Authority or any other person connected with the Services, or developed or otherwise received or obtained by Consultant in connection with the Services or the performance of Services under this Agreement. Confidential Information shall include, but not be limited to, samples, substances and other materials, conversations, correspondence, records, notes, reports, and other documents, in draft or final form, including any documentation or other analysis, and all conclusions, interpretations, recommendations and/or comments relating thereto.
 - b. The term "Consultant" as used in this Article includes all officers, directors, employees, agents, and representatives of Consultant and Consultant's sub-consultants.
2. Consultant shall mark all Confidential Information as "Privileged and Confidential" and shall keep all Confidential Information in a secure location within Consultant's offices. The Olympic Authority shall have the right, but not the obligation, to enter Consultant's offices for the sole purpose of inspecting the arrangements of Consultant for keeping the Confidential Information secure. No inspection by the Olympic Authority shall relieve Consultant of the responsibility for the performance of its obligations hereunder.
3. Consultant shall hold the Confidential Information in trust and confidence, shall not disclose the Confidential Information or any portion thereof to any third party without the prior written consent of the Olympic Authority, and shall not use the Confidential Information or any portion thereof for any purpose whatsoever except in connection with the performance under this Agreement.

4. Consultant shall notify the Olympic Authority immediately upon receipt by Consultant of any request for Confidential Information. Consultant is not prohibited by this Article from disclosing portions of the Confidential Information if, and to the extent that, such portions have become generally available to the public other than by an act or omission of Consultant or any of its subcontractors, if disclosure of such portions is required by subpoena, warrant, court order, or statutory or regulatory obligation; provided, however, that, in the event that any third party, including but not limited to a governmental employee, officer or entity, requests all or a portion of the Confidential Information, Consultant shall immediately notify the Olympic Authority and shall cooperate with the Olympic Authority in determining whether and how to respond to such request. This may include but may not be limited to Consultant opposing such request and cooperating with the Olympic Authority in obtaining a protective order or other appropriate remedy unless and until the Olympic Authority in writing (i) waives compliance with the provisions of this Article or (ii) determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the Olympic Authority waives compliance with this Article or determines disclosure is legally required, Consultant shall disclose only such portions of the Confidential Information that, in the opinion of the Olympic Authority, it is legally required to disclose, and Consultant shall use its best efforts to obtain from the party to whom the Confidential Information is disclosed written assurance acceptable to the Olympic Authority that confidential treatment will be accorded to such portions of the Confidential Information as are disclosed.

I. GENERAL PROVISIONS

1. **Other Consultants** – The Olympic Authority reserves the right to employ other consultants in connection with the Services provided by Consultant hereunder.
2. **Notices** - Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified at the beginning of this Agreement, or at such other addresses as either party may, from time to time, designate by written notice to the other, and unless otherwise mutually agreed between the parties in writing, notice shall be deemed to have been properly given and shall be deemed effective upon receipt when (i) delivered by express overnight mail delivery service with receipt for delivery or (ii) when deposited in the United States mail, postage prepaid, certified with return receipt requested. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received shall constitute receipt.
3. **Entire Agreement** - This Agreement, and Work Authorizations issued to Consultant in furtherance of and in accordance with the terms of this Agreement, and any other attachments, exhibits, or addenda, constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto and approved in the same manner as this Agreement.
4. **Captions** - The captions and/or headings contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define, limit, or describe the scope or intent of this Agreement, or any provision thereof, nor in any other way affect this Agreement.
5. **Attachments** – The Olympic Authority Standard Contract Terms (2024V3) which can be viewed at: <https://media.orda.org/?r=36909&k=d478cbc040>, together with any and all attachments, exhibits, or addenda appended hereto are incorporated by reference as if fully restated herein and shall be given the same force and effect as if fully set forth herein.

6. **Waivers** - No waiver of any provision of this Agreement or the breach thereof shall constitute a continuing waiver, or a waiver of any other provision of this Agreement or the breach thereof, and no such waiver shall be effective unless expressed in writing signed by the party against whom enforcement is sought.
7. **Survival** - All rights and obligations contained in this Agreement, which by their nature or effect are required or intended to be kept, observed, or performed after the termination or expiration of this Agreement will survive and remain binding upon and for the benefit of the Parties, their successors, and permitted assigns. For the sake of clarity, these obligations include: obligations to pay; obligations to defend, hold harmless and/or indemnify; record keeping obligations; obligations to deliver the other party's property; and any and all warranties made, the duration of which will exceed the term of this Agreement.
8. **Severability** - In the event that one or more of the provisions of this Agreement shall for any reason be declared unenforceable by a court of competent jurisdiction, such provision(s) shall have no effect on the validity of the remainder of the Agreement, which shall then be construed as if such unenforceable provision(s) was never contained in the Agreement.
9. **Compliance with Applicable Laws and Regulations** - Consultant shall review all laws, regulations, codes, and standards in effect as of the date of this Agreement that are applicable to the Services and Consultant's performance and shall comply with same. Consultant shall exercise professional care and judgment in accordance with the Standard of Care.
10. **Eligibility** - The Olympic Authority and Consultant represent that they are not currently suspended, debarred, declared ineligible or voluntarily excluded by any federal or state entity, such that performance under the Agreement is no longer possible. The Olympic Authority and Consultant shall notify the other party immediately if either party becomes suspended, debarred, declared ineligible or are voluntarily excluded by any federal or state entity such that performance under the Agreement is no longer possible, and the party receiving such notice shall have the right to terminate the Agreement in such event.
11. **Waiver of Damages** - Consultant shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead, or any indirect consequential damages.
12. **FOIL** - Pursuant to Section 87 of the Public Officers Law (also known as the Freedom of Information Law ("FOIL")), all records related to the Services, including, but not limited to that of Consultant's, that are in the possession of the Olympic Authority are subject to FOIL and presumptively open to public disclosure unless an exemption applies. The Olympic Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under FOIL provided that: (i) Consultant shall timely inform the Olympic Authority, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under FOIL is reasonable and in accordance with the grounds for non-disclosure under FOIL. Consultant agrees that neither the Olympic Authority shall have any liability for records that are compelled to be released pursuant to law either by virtue of an administrative determination that such records are not exempt from disclosure under FOIL, or by virtue of a judicial determination that compels disclosure. Nothing contained herein shall diminish or in any way adversely affect, the Olympic Authority's right to discovery in any pending or future litigation.
13. **Exhibits** – The following Exhibits are attached to and made a part of this Agreement:

Exhibit 1 – Olympic Authority Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

By: _____
Ashley Walden, President & CEO

Date: _____

CONSULTANT

By: _____

Title: _____

Date: _____

SAMPLE



Professional Construction Management Services Term Agreement

THIS PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES TERM AGREEMENT (“Agreement”) is made as of the ____ day of _____, 2026, by and between the New York State Olympic Regional Development Authority (“Olympic Authority”), whose office address is 37 Church Street, Lake Placid, New York 12946, and *FIRM NAME* (“Consultant”), whose office address is *FIRM ADDRESS*.

WHEREAS, the Olympic Authority desires, desires, and CONSULTANT is willing to provide Professional Design Services for ORDA as presented in ORDA’s 202X/2X Request for Qualifications – Professional Services Term Consultants and as further detailed in the Project Scope of Services agreements and/or Work Authorization forms issued to CONSULTANT in furtherance of the Project and in accordance with the terms of this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

A. TERM

The term of this Agreement shall be for one (1) year (the “Initial Term”), with the option of four (4) annual renewals (each a “Renewal Term”) upon the mutual agreement of the Olympic Authority and Consultant. In the event that either party desires to renew this Agreement, it shall provide written notice of its desire to renew the Agreement to the other party no later than thirty (30) days prior to the end of the then current Term. Collectively, the Initial Term and each Renewal Term shall be referred to herein as the “Term.”

B. THE CONSULTANT SERVICES

1. **Scope of Services** – Consultant agrees to provide the service as provided in the WAF issued during the Term of this Agreement in accordance with the terms of this Agreement (the “Services”). At any time during the term of this Agreement, the Consultant shall, if so directed in writing by the Olympic Authority, change or modify the Scope of Services set forth in a WAF for a Project and Consultant shall be compensated for such changes and/or modifications in accordance with terms of this Agreement. No such direction shall be deemed to constitute a breach of this Agreement.
2. **Independent Contractor** – Except as otherwise expressly provided in this Agreement or otherwise authorized in writing by the Olympic Authority, in performing the Services and incurring expenses under this Agreement, Consultant shall operate as, and have the status of, an independent contractor and shall not act as agent or be an agent of the Olympic Authority. As an independent contractor, Consultant shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for Consultant’s personnel engaged in the performance of the Services.
3. **Sub-Consultants** – Consultant shall not employ, contract with, or use the services of any consultant without obtaining the prior written approval of the Olympic Authority. No provision of this Agreement shall be construed as an Agreement between the Olympic Authority and any

consultant to Consultant or with any person, firm or corporation employed by, contracted with, or whose services are utilized by Consultant. The foregoing provisions regarding consultants shall not dilute in any way Consultant's responsibility to perform the services set forth in this Agreement at the compensation set forth herein or in any attachments to this Agreement. However, if the Olympic Authority directs Consultant in writing to obtain the services of specialists or consultants not normally required for projects of comparable type, the Olympic Authority will compensate Consultant in accordance with the terms of this Agreement.

4. **Ownership of Documents** - All drawings, specifications, computations, sketches, test data, survey results, reports, and other documents including models, photographs, renderings, and other material prepared for or relating to a Project, including any material furnished by the Olympic Authority, are the property of the Olympic Authority.
5. **Personnel** – All personnel assigned to a Project by Consultant shall be required to cooperate fully with personnel assigned to the Project by the Olympic Authority. In the event Consultant's personnel fail to cooperate, Consultant shall relieve them of their duties on the Project upon the written request of the Olympic Authority.
6. **Compensation** - The Olympic Authority shall compensate Consultant for all services rendered at the amount detailed in the WAF. Reimbursable Expenses shall be marked-up no more than ten percent (10%) above Consultant's actual cost. Meals, Travel and Lodging are not subject to mark-up.
7. **Additional Compensation** - If the Olympic Authority directs Consultant to obtain the services of specialists or consultants not normally required, the Olympic Authority shall reimburse Consultant for the actual costs incurred by Consultant for such services, plus a sum equal to ten percent (10%) thereof, provided both the supplier of the services and the cost are approved in writing in advance by the Olympic Authority.
8. **Cost Documentation** – Consultant shall maintain complete detailed and accurate billing and accounting records of all costs. During the term of this Agreement and at any time within six (6) years thereafter, Consultant shall make such records available to the Olympic Authority or the State of New York (the "State") or their authorized representatives for review and audit in such place or places as may be mutually agreed by the parties. If the Olympic Authority authorizes Consultant to retain the services of consultants or subcontractors for which Consultant will be entitled to payment hereunder, Consultant agrees to include in all contracts with such consultants and subcontractors a requirement that they maintain complete, detailed, and accurate cost and accounting records as to all their costs relating to the services and/or materials furnished by them under such contracts and that during the term of this Agreement and at any time within six (6) years thereafter, if requested by the Olympic Authority, they will make such records available to the Olympic Authority or the State or their authorized representatives for review and audit at such place or places as may be mutually agreed by the parties. If all or any part of such records are not maintained by Consultant, its consultants, or subcontractors, or made available to the Olympic Authority or the State as provided for herein, any item not supported by such records shall, at the election of the Olympic Authority, be disallowed and, if payment therefore has already been made, Consultant, upon demand, shall refund to the Olympic Authority the amount so disallowed. Payments to Consultant shall in no way affect Consultant's obligations hereunder or the right of the Olympic Authority to obtain a refund of any payment to Consultant which was in excess of that to which they were lawfully entitled.
9. **Applications for Payment** - All applications for payment whether for compensation or additional compensation shall be made no more frequently than every thirty (30) days. Any additional compensation to which Consultant may be entitled under this Agreement shall be itemized, supported by accurate documentation, including receipted bills for expenditures made

by Consultant and shall extend all hours and rates into dollar amounts. Applications for payment of additional compensation shall be submitted together with applications for payment of compensation under this Agreement. The Olympic Authority reserves the right to request any and all documentation necessary to support applications for payment, and Consultant agrees to comply with such requests. The Olympic Authority may, in its sole discretion, deny applications for payment that are not supported by proper documentation.

10. **Approval of Documents** – For all documents or other items requiring the Olympic Authority’s review and/or approval, the Olympic Authority will provide review comments of said items at the scheduled submissions as defined by the WAF. Consultant will timely respond to all comments in written form, and revisions to the documents will be made based upon mutual agreement between the Olympic Authority and Consultant. The Olympic Authority comments will be consistent with programmatic and budget requirements, and with previous comments and approvals. Consultant will revise the documents accordingly if consistent with the program and budget requirements, and previous comments. If Consultant is unable to comply with written instructions, and/or marked-up project document review sets supplied by the Olympic Authority, Consultant shall notify the Olympic Authority in writing of this fact as soon as is practicable under the circumstances. If the Olympic Authority provides comments, or requests revisions that are in conflict with programmatic or budget requirements, or with previous comments and approvals, required revisions will be treated as an additional service consistent with this Agreement, and Consultant shall be compensated in accordance with the WAF.

C. **INSURANCE**

Consultant shall procure and maintain in full force and effect during the term of this Agreement all insurances as provided for in the Insurance Requirements attached hereto as Exhibit 2. Prior to the commencement of the Services, Consultant shall supply the Olympic Authority with proof of the insurances required under this section.

D. **STANDARD OF CARE**

1. Consultant shall exercise the same degree of care, skill, and diligence in the performance of its services as is ordinarily possessed and exercised by a consultant practicing in the same disciplines and performing services of the same or substantially similar nature as are required by this Agreement and any applicable WAF (“Standard of Care”).
2. Unless specifically designated as the responsibility of Consultant by a WAF, Consultant shall not be responsible for:
 - a. Construction means, methods, techniques, sequences, procedures, or safety precautions, and programs in connection with a Project;
 - b. The failure of any contractor, subcontractor, vendor, or other Project participant not under contract with Consultant to fulfill contractual responsibilities to the Olympic Authority or to comply with federal, state, or local laws, regulations, and codes; or
 - c. Procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the CONSULTANT hereunder.

E. **DISPUTES**

1. **Direct Negotiation** – In the event of a dispute between the Olympic Authority and Consultant arising out of or related to this Agreement, Work Authorizations issued pursuant to and in furtherance of this Agreement, and/or the performance of this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute informally, each party may, upon the mutual agreement of both parties, nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. In such circumstances, the aggrieved party shall notify the other

party in writing of the item or items in dispute, providing enough specificity to apprise the other party of the nature of the dispute. The parties shall then meet or conference at a mutually agreeable place and time and attempt to negotiate the disputed item or items in good faith. In the event that a mutually agreeable or satisfactory result is unable to be reached, nothing herein contained shall be construed as limiting a party in exercising its contractual rights or seeking any remedies available to them under the law.

2. **No Arbitration** –Should such negotiations provided for in the preceding paragraph fail, disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but, instead, are subject to litigation in the Supreme Court of the State of New York in and for the County of Essex.

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1. Dissolution or Bankruptcy of Consultant

In the event of the dissolution or bankruptcy of Consultant, the Olympic Authority may immediately terminate this Agreement without further liability to Consultant, except for obligations to pay outstanding sums owed, and all work, reports, and other data and records pertaining to the Services that are in the custody or control of Consultant shall be delivered to the Olympic Authority, and the Olympic Authority shall pay the legal representative of Consultant all amounts due and owing by the Olympic Authority to Consultant, to the date of termination, in accordance with the provisions of this Agreement.

2. Right of the Olympic Authority to Terminate

At any time during the effectiveness of this Agreement, the Olympic Authority shall have the right with or without cause, upon ten (10) days written notice to the Consultant, to terminate this Agreement in whole or in part, and in the event of such termination, the Consultant shall deliver to the Olympic Authority all work, reports and other data, records and materials in its custody or control pertaining to the Services, and the Olympic Authority shall pay to the Consultant all amounts due and earned to the time of termination in accordance with the provisions of this Agreement. Such termination shall not give rise to any cause of action against the Olympic Authority for damages, loss of profits, expenses, or other remuneration of any kind.

Notwithstanding any other provision of this Agreement, if such termination is made necessary because of the Consultant's failure to fulfill its obligations under this Agreement or any other fault of the Consultant, the Olympic Authority may withhold payment of all or any part of any monies which otherwise may be payable to the Consultant under this Agreement and apply such monies toward any reasonable and unmitigable damages or expenses sustained by the Olympic Authority as a result of such failure including, without limitation, any excess costs incurred by the Olympic Authority in completing the Services by the use or employment of other consultants or otherwise.

3. Right of the Consultant to Terminate.

At any time during the effectiveness of this Agreement, and provided that the Consultant is not in breach of this Agreement, the Consultant shall have the right, upon sixty (60) days written notice to the Olympic Authority, to terminate this Agreement. In the event of such termination, the Olympic Authority shall pay to the Consultant all amounts due and earned by the Consultant as of the date of termination, in accordance with the provisions of this Agreement.

G. LIABILITY OF CONSULTANT

1. Consultant shall be responsible for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Services pursuant to this Agreement or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of Consultant and its agents, consultants, subcontractors, guests, invitees, employees, servants, lessees and/or concessionaries and anyone directly or indirectly employed

by any of them or anyone for whose acts any may be liable (each a “Responsible Party”), regardless of whether or not a claim arises under Labor Law Sections 200, 240 and/or 241, Industrial Code Rule 23 and/or common law negligence, or by reason of liability imposed by operation of law.

2. To the fullest extent permitted by law, Consultant shall defend, indemnify, hold harmless and release the Olympic Authority, the State of New York, the record owner of the real property on which the Services are being furnished and/or performed, any public benefit corporation, railroad or public utility whose property or facilities are affected by the Services, and/or their respective affiliates, members, partners, directors, officers, employees, consultants, contractors and/or agents (individually, an “Indemnified Party” and collectively, the “Indemnified Parties”), from and against any and all suits, claims, liabilities, fines, damages and/or any types of action whatsoever, including attorneys’ fees, defense costs and legal costs, for bodily injury (including exposure to toxic substances), sickness, disease or death sustained by any person, or to injury to or destruction of tangible property (including loss of use), arising out of or resulting from the performance of the Services pursuant to this Agreement or negligent or otherwise tortious acts, errors or omissions and/or willful misconduct of any Responsible Party, or by reason of liability imposed by operation of law.
3. The Olympic Authority may retain such monies from the amount due Consultant as may be necessary to satisfy any claim for damages recovered against the Indemnified Parties. Consultant’s obligation under this paragraph shall not be deemed waived by the failure of the Olympic Authority to retain the whole or any part of such monies due Consultant, or where such suit, action, damages, and/ or costs have not been resolved or determined prior to release of any monies to Consultant under this Agreement.
4. The obligation of Consultant to indemnify the Indemnified Parties (1) shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits, including workers' compensation or other employee benefit acts, provided by Consultant, and (2) shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Indemnified Parties.
5. Consultant has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the Indemnified Parties. This obligation shall include the cost of attorneys’ fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding. Notwithstanding the foregoing, the Olympic Authority reserves the right to join such action or proceeding, at its sole expense, when it determines there is an issue involving a significant public interest.
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 - b. The term “Consultant” as used in this Article includes all officers, directors, employees, agents, and representatives of Consultant and Consultant’s sub-consultants.
2. Consultant shall mark all Confidential Information as “Privileged and Confidential” and shall keep all Confidential Information in a secure location within Consultant’s offices. The Olympic Authority shall have the right, but not the obligation, to enter Consultant’s offices for the sole purpose of inspecting the arrangements of Consultant for keeping the Confidential Information secure. No inspection by the Olympic Authority shall relieve Consultant of the responsibility for the performance of its obligations hereunder.
 3. Consultant shall hold the Confidential Information in trust and confidence, shall not disclose the Confidential Information or any portion thereof to any third party without the prior written consent of the Olympic Authority, and shall not use the Confidential Information or any portion thereof for any purpose whatsoever except in connection with the performance under this Agreement.
 4. Consultant shall notify the Olympic Authority immediately upon receipt by Consultant of any request for Confidential Information. Consultant is not prohibited by this Article from disclosing portions of the Confidential Information if, and to the extent that, such portions have become generally available to the public other than by an act or omission of Consultant or any of its subcontractors, if disclosure of such portions is required by subpoena, warrant, court order, or statutory or regulatory obligation; provided, however, that, in the event that any third party, including but not limited to a governmental employee, officer or entity, requests all or a portion of the Confidential Information, Consultant shall immediately notify the Olympic Authority and shall cooperate with the Olympic Authority in determining whether and how to respond to such request. This may include but may not be limited to Consultant opposing such request and cooperating with the Olympic Authority in obtaining a protective order or other appropriate remedy unless and until the Olympic Authority in writing (i) waives compliance with the provisions of this Article or (ii) determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the Olympic Authority waives compliance with this Article or determines disclosure is legally required, Consultant shall disclose only such portions of the Confidential Information that, in the opinion of the Olympic Authority, it is legally required to disclose, and Consultant shall use its best efforts to obtain from the party to whom the Confidential Information is disclosed written assurance acceptable to the Olympic Authority that confidential treatment will be accorded to such portions of the Confidential Information as are disclosed.

I. GENERAL PROVISIONS

1. **Other Consultants** – The Olympic Authority reserves the right to employ other consultants in connection with the Services provided by Consultant hereunder.
2. **Notices** - Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified at the beginning of this Agreement, or at such other addresses as either

party may, from time to time, designate by written notice to the other, and unless otherwise mutually agreed between the parties in writing, notice shall be deemed to have been properly given and shall be deemed effective upon receipt when (i) delivered by express overnight mail delivery service with receipt for delivery or (ii) when deposited in the United States mail, postage prepaid, certified with return receipt requested. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received shall constitute receipt.

3. **Entire Agreement** - This Agreement, and all WAF issued to Consultant in furtherance of and in accordance with the terms of this Agreement, and any other attachments, exhibits, or addenda attached thereto, constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto and approved in the same manner as this Agreement.
4. **Captions** - The captions and/or headings contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define, limit, or describe the scope or intent of this Agreement, or any provision thereof, nor in any other way affect this Agreement.
5. **Olympic Authority Standard Contract Terms** - The Olympic Authority Standard Contract Terms, which can be viewed at: <https://media.orda.org/?r=23445&k=833bea46a6>, are incorporated by reference herein as if fully set forth herein.
6. **Waivers** - No waiver of any provision of this Agreement or the breach thereof shall constitute a continuing waiver, or a waiver of any other provision of this Agreement or the breach thereof, and no such waiver shall be effective unless expressed in writing signed by the party against whom enforcement is sought.
7. **Survival** - All rights and obligations contained in this Agreement, which by their nature or effect are required or intended to be kept, observed, or performed after the termination or expiration of this Agreement will survive and remain binding upon and for the benefit of the Parties, their successors, and permitted assigns. For the sake of clarity, these obligations include obligations to pay; obligations to defend, hold harmless and/or indemnify; record keeping obligations; obligations to deliver the other party's property; and any and all warranties made, the duration of which will exceed the term of this Agreement.
8. **Severability** - In the event that one or more of the provisions of this Agreement shall for any reason be declared unenforceable by a court of competent jurisdiction, such provision(s) shall have no effect on the validity of the remainder of the Agreement, which shall then be construed as if such unenforceable provision(s) was never contained in the Agreement.
9. **Compliance with Applicable Laws and Regulations** - Consultant shall review all laws, regulations, codes, and standards in effect as of the date of this Agreement that are applicable to the Services and Consultant's performance and shall comply with same. Consultant shall exercise professional care and judgment in accordance with the Standard of Care.
10. **Eligibility** - The Olympic Authority and Consultant represent that they are not currently suspended, debarred, declared ineligible or voluntarily excluded by any federal or state entity, such that performance under the Agreement is no longer possible. The Olympic Authority and Consultant shall notify the other party immediately if either party becomes suspended, debarred, declared ineligible or are voluntarily excluded by any federal or state entity such that performance under the Agreement is no longer possible, and the party receiving such notice shall have the right

to terminate the Agreement in such event.

11. **Waiver of Damages** - Consultant shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead, or any indirect consequential damages.
12. **FOIL** - Pursuant to Section 87 of the Public Officers Law (also known as the Freedom of Information Law ("FOIL")), all records related to the Services, including, but not limited to that of Consultant's, that are in the possession of the Olympic Authority are subject to FOIL and presumptively open to public disclosure unless an exemption applies. The Olympic Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under FOIL provided that: (i) Consultant shall timely inform the Olympic Authority, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under FOIL is reasonable and in accordance with the grounds for non-disclosure under FOIL. Consultant agrees that neither the Olympic Authority shall have any liability for records that are compelled to be released pursuant to law either by virtue of an administrative determination that such records are not exempt from disclosure under FOIL, or by virtue of a judicial determination that compels disclosure. Nothing contained herein shall diminish or in any way adversely affect, the Olympic Authority's right to discovery in any pending or future litigation.
13. **Exhibits** – The following Exhibits are attached to and made a part of this Agreement:

Exhibit 1 – Olympic Authority Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

By: _____
Ashley Walden, President & CEO

Date: _____

FIRM

By: _____

Printed Name: _____

Title: _____

Date: _____