

**FORM OF DESIGN-BUILD CONTRACT
FOR THE DESIGN, PROCUREMENT,
CONSTRUCTION, AND COMMISSIONING OF THE
LIFE SCIENCES PUBLIC HEALTH LABORATORY
PROJECT IN ALBANY, NEW YORK**

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December
DA# _____

Project Name

Project Number

DESIGN-BUILD CONTRACT
FOR THE DESIGN, PROCUREMENT, CONSTRUCTION, AND COMMISSIONING OF THE NEW YORK STATE LIFE SCIENCES PUBLIC HEALTH LABORATORY PROJECT IN ALBANY, NEW YORK

This Design-Build Contract for the design, procurement, construction, and commissioning of the New York State Life Sciences Public Health Laboratory project in Albany, New York (“**Contract**”) is made and entered into as of _____, 2019 between the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK**, a New York public benefit corporation established by the Laws of the State of New York, with its principal office located at 515 Broadway, Albany, New York 12207-2964 and _____, a joint venture comprised of _____ (“_____”) with its principal place of business at _____ and _____ with its principal place of business at _____ (“_____”) (collectively the “**Design-Builder**”) having an office _____, for design-build services in connection with the design, procurement, construction, start-up, testing, and commissioning of New York State Life Sciences Public Health Laboratory and all of its appurtenances (collectively, the “**Work**” as more fully defined below and in the Contract Documents) at The Governor Averell Harriman State Office Building Complex in Albany, New York. Owner and Design-Builder may hereinafter be referred to individually as “**Party**” and collectively as “**Parties**.”

RECITALS

WHEREAS, Owner intends to develop and construct a new New York State Life Sciences Public Health Laboratory, including without limitation a main laboratory building, a trans-shipping and warehouse facility, an all hazards receipt facility, and a central utility plant, located at The Governor Averell Harriman State Office Building Complex in Albany, New York pursuant to the New York State Legislature’s Chapter 3 of the Laws of 2004.

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

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

WHEREAS, Owner is public benefit corporation of the State of New York empowered by Titles 4 and 4-B of the Public Authorities Law (the “**Act**”), to provide design and project management services, and to issue its bonds, notes and other obligations, including without limitation for the NYS DoH.

WHEREAS, Owner has been authorized by New York State Law (the “**Infrastructure Investment Act**”) to perform the Project on a Design-Build basis;

WHEREAS, the Owner issued a Request for Proposal for design-build services, dated _____, 2019, (the “**RFP**”), for the design and construction of the Project, a new Life Sciences Public Health Laboratory and appurtenances and the related site work at the Project;

WHEREAS, the Design-Builder responded to the RFP in a proposal dated _____, 2019, (the “**Proposal**”);

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

WHEREAS, Design-Builder is experienced in the design, engineering, procurement, construction, assembly, start-up, commissioning and testing of equipment and systems utilized in connection with laboratory facilities similar to the Work;

WHEREAS, the Owner has authorized the execution and delivery of this Contract;

WHEREAS, Design-Builder and Owner have agreed that the total cost for the design, engineering, procurement, construction, assembly, start-up, commissioning, and testing 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, which terms and conditions are hereinafter set forth;

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 Parties hereto have agreed as follows:

ARTICLE 1. SCOPE OF WORK

1.1. Scope of the Work. The Design-Builder's Scope of Work includes: the design and construction of a new Life Sciences Public Health Laboratory and related Work required or reasonably inferable from the Contract Documents for the total design, construction, installation, furnishing, equipping, and functioning of the Project in accordance with the terms of the Contract Documents, including the New York State Life Sciences Public Health Basis of Design attached hereto as Exhibit O, together with all additional, collateral, and incidental items, work, services, and all other obligations imposed on the Design-Builder by the Contract Documents; the accepted portions of the Design-Builder's technical proposal that are incorporated in the executed Contract; and the development and generation of contractually-required documentation, subsequent to the Effective Date, including drawings, specifications, reports, and models sufficient to construct the Project in accordance with the Contract Documents. The Work shall mean the obligations undertaken by Design-Builder pursuant to the Contract Documents or obligations reasonably inferable therefrom for the Project. Work includes, unless specifically excepted, the development, and preparation of the design documents for the Project, including the Schematic Design Documents, Design Development Documents, Construction Documents, and Technical Specifications; laboratory planning and design services for lab spaces and equipment (both fixed and moveable); interior design services for fixtures, furniture and equipment (FF&E); preconstruction services; value engineering; the furnishing of all Material, Construction Equipment, labor, and Construction Aids; Materials and equipment management; transportation management, including expediting services; reviewing the Contract Documents as specified herein; preparing and reviewing, and causing Design-Builder's Subcontractors to prepare and review shop drawings and other required Submittals; Modeling, construction management; constructability reviews; erection and construction services; environmental management; layout services; equipment delivery, receipt, and installation; procurement; manufacturing; fabrication; distribution; coordination; demolition; providing supplies; Materials management and handling; training; pre-commissioning; Start-up and Commissioning; testing (including Performance Tests); supplies; plants; tools; scaffolding; transportation; licensing; permitting; zoning; code review and approval; temporary construction of every nature; superintendence; project management; safety management; supervision; oversight; scheduling; surveying; cost estimating; cost control; cost and schedule reporting and updating; testing and inspection; quality control, quality assurance, and related reporting; training; development and installation of an Integrated Workplace Management System; vendor surveillance; corrective actions; insurance; taxes; Permits; submittal of documentation (e.g., Operating and Maintenance Information); and all other services, facilities and fees and expenses, whether specified herein or not, necessary for the full and proper performance and completion of the requirements of the Contract Documents and items reasonably inferable therefrom, whether provided or to be provided by Design-Builder or a Subcontractor, or any other entity for whom Design-Builder is responsible, and whether or not performed or located on or off of the Site. Work also means that which is produced, constructed or built pursuant to the Contract Documents. All materials or labor for Work which is shown on the Drawings or described in the Technical Specifications or is reasonably inferable therefrom as being necessary to produce a finished Project shall be provided by Design-Builder or its Subcontractors. The Work also includes completion of any and all off-site work and improvements that are reasonably required in order for Design-Builder to complete the Work including, without limitation, off-site work that is not specifically identified in the Basis of Design, but is reasonably inferable therefrom. Design-Builder shall also provide full and complete training of the Owner's representatives, agents, and employees in the use and operation of the completed Project, and its facilities and equipment.

1.2. Engagement of Design-Builder. Owner hereby engages Design-Builder to perform all of the Work in accordance with the requirements of the Contract Documents on or before the Milestone Dates identified in Exhibit D for the GMP, and Design-Builder hereby accepts such engagement. The Design-Builder shall: (1) apply for, obtain and maintain Government Approvals for the Project (other than those for which the Owner has responsibility); (2) comply with all reporting obligations; (3) comply with the ethical conduct and integrity standards identified in General Conditions, Sections 17.07 and 17.08; (4) design the Project as set forth in the Contract Documents; (5) construct the Project as set forth in the Construction Documents, including the Drawings and Technical Specification and in accordance with the Contract Documents; (6) conduct commissioning and start-up operations; (7) successfully complete any required testing; and (8) achieve Substantial Completion and Final Completion of the Project in accordance with the Contract Documents. The Design-Builder shall have full responsibility for quality assurance and quality control for the construction Work and exclusive responsibility for all

design services and all construction means, methods, techniques, sequences, and procedures necessary for the prompt, and orderly completion of the Work.

1.3. Completion of the Work. Design-Builder shall coordinate and complete the various parts of the Work so that no part shall be left in an unfinished or incomplete condition unless indicated otherwise by the Contract Documents. On the basis of the Contract Documents and the Work indicated, described, or implied in or reasonably inferable from the Contract Documents, Design-Builder shall provide all items required for the proper execution and completion of the Work.

1.4. Joint and Several Liability. [REDACTED] and [REDACTED], 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 under this Contract.

1.5. Design, Procurement, Installation, Management, Construction, and Commissioning Concept. The Work is intended to result in Design-Builder designing, procuring, constructing, commissioning, testing, and starting up the Work as set forth in, or reasonably inferable from, the Contract Documents, for Owner's or Client's use, on or before the Milestone Dates, within the GMP, and incorporating the criteria agreed upon by Owner and Design-Builder as set forth in the Contract Documents. Design-Builder acknowledges that Owner is relying on the expertise of Design-Builder to furnish the completed Work in accordance with the requirements of the Contract Documents. It is contemplated that Design-Builder will perform all Work to accomplish this result, including, but not limited to, any design and engineering, procurement, prudent temporary and permanent material utilization, installation, value engineering, management, demolition, construction, materials management, quality control and quality assurance, complete documentation submittals, final As-Built Drawings, and Start-Up and Commissioning. Design-Builder will provide appropriate backup and substantiation for all of its Work (including any Work provided by its Subcontractors).

1.6. Not Used.

1.7. Single Point of Responsibility. Design-Builder is responsible for the timely and proper supervision, coordination, execution, management, and inspection of all of the Work, including any Work provided by Subcontractors. All Work shall be in compliance with the Contract Documents. The Design-Builder 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. Design-Builder agrees to cooperate with, and as required by the Contract Documents, coordinate with Owner's Separate Contractors and Other Owner Authorized Parties, including Owner's Technical Advisor, with respect to other activities at the Premises.

1.7.1. Notification of Owner Action. As set forth in Article 4 of the Contract General Conditions of the Work, Design-Builder shall promptly notify Owner in writing that a specific action must be taken by Owner whenever Design-Builder believes that Owner's lack of action (including any review, response, or approval) may delay Design-Builder's execution of the Work or impact the GMP or Project Schedule.

1.7.2. Design-Builder Obligations. Except as otherwise allowed by the Contract Documents, Design-Builder 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 other than Design-Builder.

1.7.3. Responsibility. Design-Builder shall be responsible to Owner for the acts and omissions of Design-Builder's employees, Subcontractors, and their agents and employees, and other Persons performing any of the Work or supplying any material for the Work under a Subcontract with Design-Builder.

1.7.4. Administration/Standard of Care. Owner is relying upon Design-Builder for fair and honest, as well as experienced and competent judgments and opinions regarding all aspects of the Work. Design-Builder covenants with Owner to perform the Work required by the Contract Documents in accordance with the quality generally recognized and accepted within the construction industry and using the same degree of professional skill, judgment, and abilities in performing the Work as professionals with significant experience in the design, construction, and administration of projects that are similar in scope, quality, and complexity to the Project. Design-

Builder shall fully cooperate with Owner, Owner's Technical Advisor, Other Owner Authorized Parties, Owner's Separate Contractors, consultants, agents and other contractors in furthering the interests of Owner with respect to the Project. Design-Builder agrees to furnish efficient business administration, project management, and project oversight, and to use reasonable efforts to furnish at all times an adequate supply of qualified design and engineering, procurement, construction, safety and quality assurance professionals, workers, craft labor, supervision, Construction Equipment, Construction Aids, and Materials. Design-Builder shall perform the Work in the most expeditious and economical manner consistent with good design, engineering, procurement, and construction practices.

1.8. Financial Assurance. Prior to the execution of the Contract and at Owner's request during its term, Design-Builder 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 Design-Builder's creditworthiness. If Design-Builder's creditworthiness has materially worsened from the execution date of this Contract, Owner may provide Design-Builder with written Notice requesting performance assurance in a mutually agreed form and amount. Failure of Design-Builder 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 Design-Builder is a joint venture, then the parent entities of each respective joint venture entity must also comply with these requirements.

1.9. Commencement of Work and Notices to Proceed. Design-Builder shall commence the Work under this Contract on a date agreed to by Owner, after receipt of the applicable Notice to Proceed delivered in accordance with the Notice requirements set forth in General Conditions, Section 2.06. Design-Builder shall not be authorized to commence any Work, nor shall any Work be deemed to have been commenced under this Contract, prior to the issuance of a Notice to Proceed. Owner, at its discretion, may release Design-Builder for only a portion of the Work, and Design-Builder shall proceed with only that portion of the Work.

1.10. Sufficiency of the Technical Specifications. Design-Builder shall develop and review the Drawings and Technical Specifications and agrees they shall be sufficient to perform all of the Work. The Contract Documents, including Exhibit C ("**Technical Specifications/Scope of Work**") and Exhibit O ("**Basis of Design**"), contain the agreed upon Work that the Design-Builder will perform as part of its Contract and includes documents, such as specifications and drawings, developed before and subsequent to the Effective Date as hereinafter defined that are incorporated into the Contract as Contract Documents. Design-Builder has reviewed the Contract Documents and agrees that the activities included therein are sufficient to perform all of the Work for the Project. Design-Builder 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 Drawings and Technical Specifications being insufficient to complete the Work.

1.11. Not Used.

1.12. No Discrimination.

1.12.1. To the extent required by the Contract Documents, Article 15 of the NYS Executive Law (also known as the Human Rights Law), and all other NYS and United States statutory and constitutional non-discrimination provisions and Laws, neither Design-Builder nor any of its Subcontractors shall discriminate against any of their employees, other contractors' employees, Subcontractors' employees, or Owner's employees, or applicants for employment because of race, creed, religion, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence status, or because of any other factor protected by applicable Laws. Design-Builder and its Subcontractors shall not harass, or permit the harassment of, any Person on the basis of his race, creed, age, color, religion, sex (including gender identity or expression), national origin, sexual orientation, military status, disability, predisposing genetic characteristics, marital status or domestic violence status, or any other factor protected by applicable Laws, and will not participate in creating or tolerating a hostile Work environment on the Premises or an environment which could be perceived as hostile. Design-Builder agrees to comply with all applicable Laws, Executive Orders, and regulations relating to non-discrimination in employment, and all modifications to the applicable non-discrimination Laws, Executive Orders, and regulations that are enacted or adopted after the Effective Date. Design-Builder also agrees to bind every Subcontractor to the provisions of this Section in each and every Subcontract and actively enforce such provisions.

1.12.2. If the Design-Builder is directed to do so by the Owner, the Design-Builder shall request each employment agency, labor union or authorized representative of workers with which the Design-Builder has a collective bargaining agreement or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, sex, national origin, age, religion, disability or marital status, or any other factor protected by applicable Laws, and that such union or representative will affirmatively cooperate in the implementation of the Design-Builder's obligations under Articles 15 and 15A of the NYS Executive Law and any applicable Project Labor Agreement.

1.12.3. The Design-Builder shall state, in all solicitations or advertisements for employees, that in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, or any other factor protected by applicable Laws.

1.12.4. The Design-Builder shall include the provisions of this Section in every Subcontract in such a manner that such provisions will be binding upon each Subcontractor as to the operations for the Contract to be performed within the State of New York.

1.13. MBE/WBE Requirements. Design-Builder shall comply with the Owner's MBE/WBE Requirements set forth in the Contract Documents, including General Conditions, Articles 20 and 21. Design-Builder shall use the NYS Contract System to monitor and report on such compliance to Owner. Design-Builder shall develop programs for equal employment opportunities and involvement of minority and women owned businesses in relation to the Project in compliance with Owner's MBE/WBE Requirements. Design-Builder shall provide for the inclusion of any such programs in the Contract Documents, and shall develop a system for monitoring compliance with the same. The overall goal for MBE/WBE participation under this Contract is _____ percent (___ %); _____ percent (___%) for MBE and _____ (___%) for WBE participation, respectively. In accordance with the provisions of the Contract Documents, Design-Builder shall use good faith efforts to meet this goal.

1.14. Service-Disabled Veteran-Owned Businesses ("SDVOB") Requirements. Design-Builder shall develop programs for equal employment opportunities and involvement of SDVOB owned businesses in relation to the Project in compliance with Owner's SDVOB Requirements set forth in the Contract Documents, including General Conditions, Articles 20 and 21. Design-Builder shall provide for the inclusion of any such programs in the Contract Documents and shall develop a system for monitoring compliance with the same. The overall goal for SDVOB participation under this Contract is six percent (6%). Design-Builder shall use good faith efforts to meet this goal.

1.15. Project Labor Agreement. At least one-hundred and eighty (180) Days prior to Design-Builder's mobilization to the Site, Owner shall conduct a study to determine if a Project Labor Agreement ("PLA") will be used for the construction Work performed on the Project. If the PLA study conducted by Owner results in a recommendation to include a PLA on the Project, the Owner will provide a draft form of PLA to Design-Builder. At least ninety (90) Days prior to Design-Builder's scheduled mobilization date as reflected in the Milestone Dates in Exhibit D, Design-Builder shall, based on the draft form of PLA provided by Owner, negotiate an appropriate PLA with the Greater Capital Region Building and Construction Trades Council for all of the Work performed by labor covered by the PLA on the Project and submit the PLA to Owner for Owner's review and approval. Once approved by Owner, the Design-Builder and all applicable Subcontractors must comply with the approved PLA which will be attached hereto as Exhibit QQ.

1.16. Project Meetings. During the course of the Project and in accordance with the Contract Documents, Design-Builder shall schedule and conduct meetings on a regular basis between Owner, Other Owner Authorized Parties, Owner's Technical Advisor, the Design-Builder, the Subcontractors (as appropriate for the status of the Project), and any other parties designated by Owner for the purpose of discussing the status of the Project and any related issues. Design-Builder shall prepare an agenda for each such meeting, and shall (immediately after any such meeting) compile and distribute minutes to all participants.

1.17. Monthly Reports. Design-Builder shall prepare and submit to the Owner the status report complying with the provisions of the Contract Documents, including General Requirements, Section 013200 and Exhibit H, which report shall include, but shall not be limited to, (i) a detailed description of the progress of the Project, (ii) a statement of any significant Project issues which remain unresolved, and a summary list of Design-Builder's observations and suggested recommendations and resolutions as to the same, (iii) updated estimates of Project costs and anticipated contingency uses,

(iv) an updated Project Schedule for the Owner's review, and (v) a summary of any significant Project events which are scheduled to occur during the following thirty (30) Days.

1.18. Electronic Project Management System. Unless otherwise required by the Contract Documents and provided that Design-Builder's electronic management systems meet Owner's requirements and can interface with Owner's electronic management systems, Design-Builder shall utilize its own electronic management systems for the Project. Wherever in this Contract, Design-Builder is required to submit documents including, but not limited to, Submittals, Construction Documents, Change Order Requests, other similar documents to Owner; Design-Builder shall make such submission utilizing Owner's electronic Project Management Program. If the Design-Builder's system is different from the Owner's system, the Design-Builder will be required to utilize a system that is compatible with Owner's requirements and enter all contractually-required information into the Owner's system. Design-Builder submission in the electronic project management system shall not constitute Notice as defined in General Conditions, Section 2.06.

ARTICLE 2. GUARANTEED MAXIMUM PRICE

2.1. Formulation of Guaranteed Maximum Price. Subject to the provisions of General Conditions, Article 7 (Change Orders), the Guaranteed Maximum Price ("GMP") is the absolute maximum of the total amounts payable by Owner to the Design-Builder for the GMP Work. The GMP is the sum total of the estimated Allowable Construction Costs + the Design-Builder's Fixed-Fee for Design Services + the Design-Builder's Fixed-Fee for Preconstruction Services + the Design-Builder's Fee during the construction phase (based on a percentage of the Allowable Construction Costs) + the Insurance Fee + the Bonds Fee + the Design-Builder's General Conditions (based on a General Conditions estimate approved by the Owner) + the Design-Builder Contingency. The GMP shall be established through a two-step process wherein the Design-Builder, working in conjunction with the Owner and Owner's Technical Advisor, shall (i) prepare an Initial GMP based on a set of approved one hundred percent (100%) Schematic Design Documents for the entire Project, representing approximately thirty percent (30%) of the overall required design submissions; and (ii) prepare a final GMP based on a set of approved one hundred percent (100%) Design Development Documents for the entire Project, representing approximately eighty percent (80%) of the overall required design submissions. The Initial GMP and final GMP, as well as the Project Schedule shall be developed as stated below. The GMP shall not be increased to the extent caused by any emergency caused by the negligence or willful misconduct of Design-Builder, any Subcontractor, or other person under Design-Builder's or a Subcontractors' control.

2.1.1. Target Price. The Project parameters include, among other things, a Target Price relating to the budget for the Design-Builder's Work on the Project. Design-Builder agrees that this Target Price may not, under any circumstances, be exceeded.

2.1.1.1. The Target Price. The Owner's total budget allocated for all contractual obligations of the Design-Builder for the Project, including all design, procurement, construction, and commissioning of the Project, as well as any other hard and/or soft costs, is \$690 million dollars ("**Owner's Target Price**").

2.1.2. The Preliminary Cost Estimate. Design-Builder has provided a Preliminary Cost Estimate with its proposal in the amount of \$ [REDACTED]. The Preliminary Cost Estimate includes the Design-Builder's Allowable Construction Costs for the Project + the Design-Builder's Fixed-Fee for Design Services + the Design-Builder's Fixed-Fee for Preconstruction Services + the Design-Builder's Fee + the Design-Builder's General Conditions + the Insurance costs + the Bond costs + the estimated Design-Builder Contingency, and as set forth in Exhibit F, Preliminary Cost Estimate. The Preliminary Cost Estimate shall be used to monitor the estimated construction costs of the Work, wherein such costs shall be identified consistent with the spaces established in Basis of Design. Certain elements of the Preliminary Cost Estimate shall also be used for comparison at the establishment of the Initial GMP and, if necessary, when the final GMP is established. The Preliminary Cost Estimate shall not be considered a GMP figure for purposes of the Contract. The Preliminary Cost Estimate submitted shall include the following:

2.1.2.1. a statement identifying the documents on which the Preliminary Cost Estimate is based, including the Basis of Design, this Contract, a Level 1 Project Schedule, and any other documents on which the Design-Builder relied in preparing its Preliminary Cost Estimate;

2.1.2.2. a statement of the Allowable Construction Costs organized by building spaces as generally set forth in the BOD;

2.1.2.3. the Design-Builder's insurance costs and bond costs (calculated based on a percentage of Allowable Construction Costs and as delineated in Exhibit F);

2.1.2.4. the Design-Builder's Fixed-Fee for Design Services, as defined herein;

2.1.2.5. the Design-Builder's Fixed-Fee for Preconstruction Services, as defined herein;

2.1.2.6. the Design Builder's General Conditions (based on a General Conditions estimate approved by the Owner);

2.1.2.7. the Design-Builder's Fee for the construction phase (calculated based on a percentage of the Allowable Construction Costs);

2.1.2.8. the Design-Builder's estimated Design-Builder Contingency (calculated based on a percentage of the Allowable Construction Costs);

2.1.2.9. a list of the clarifications and assumptions made by the Design-Builder in the preparation of the Preliminary Cost Estimate, including assumptions under Contract, Sections 2.5 and 2.6, to supplement the information provided by the Owner and that contained in the Basis of Design; and

2.1.2.10. for purposes of calculating the insurance cost, the bond costs, General Conditions, Design-Builder's Fee, and the Design-Builder Contingency on a percentage basis, the Allowable Construction Costs shall not include Design Builder's Fixed-Fee for Design Services nor Design-Builder's Fixed-Fee for Preconstruction Services.

2.1.3. Initial Guaranteed Maximum Price.

2.1.3.1. Working in conjunction with Owner and Owner's Technical Advisor to assess the level of completion of the Project design, Design-Builder shall provide to Owner and Owner's Technical Advisor for review and Owner's approval a set of one hundred percent (100%) Schematic Design Documents for the entire Project. Such Schematic Design Documents shall be prepared in accordance with Exhibit W, Owner's Design Professional's Submission Requirements, representing the completion of the Project's schematic design phase and approximately thirty percent (30%) of the overall required design submission. In addition, Design-Builder shall prepare and provide for review and comment additional system designs, which such system designs are set forth in Section 4.22 (K) of the General Conditions. Upon Owner's written approval to Design-Builder that the submitted Schematic Design Documents for the Project are complete and in compliance with Exhibit W, and Owner's written approval that the additional system designs identified in Section 4.22 (K) of the General Conditions have achieved the designated level of completion, the Design-Builder shall then have fourteen (14) Days in which to submit an initial GMP (the "**Initial GMP**"), providing supporting data and any written clarifications or objections for review and approval by Owner.

2.1.3.2. The Initial GMP shall be comprised of the sum total of (i) the estimated Allowable Construction Costs as defined in Exhibit JJ; (ii) Design-Builder's Fixed-Fee for Design Services; (iii) Design-Builder's Fixed Fee for Preconstruction Services; (iv) Design-Builder's General Conditions Costs as identified in Exhibit OO (based on a General Conditions estimate approved by the Owner); (v) Design-Builder's Fee for the construction phase (as calculated based on a percentage of the Allowable Construction Costs); (vi) the insurance and the bond costs required of Design-Builder; (vii) and the Design-Builder Contingency (as calculated based on a percentage of the Allowable Construction Costs). For purposes of calculating the insurance cost, the bond costs, General Conditions, Design-Builder's Fee, and the Design-Builder Contingency on a percentage basis, the Allowable Construction Costs shall not include Design Builder's Fixed-Fee for Design Services nor Design-Builder's Fixed-Fee for Preconstruction Services. The

Initial GMP shall be divided into detailed line items, each of which represents Design-Builder's estimate, for purposes of establishing the Initial GMP, of a separate and distinct item of cost or related group of costs based on systems and trades related to the construction of the Project.

2.1.3.3. Based upon the one hundred percent (100%) completed Schematic Design Documents for the Project, Design-Builder shall also update the previously submitted Preliminary Project Schedule consistent with the project controls procedures in the Contract Documents, including General Requirements, Sections 013100 and 013200, further defining those Milestone Dates previously established between the parties.

2.1.3.4. If the Initial GMP submitted by Design-Builder to Owner exceeds the Preliminary Cost Estimate or Owner's Target Price, Design-Builder shall make appropriate recommendations to Owner how costs may be reduced, in addition to the procedures and limitations set forth elsewhere in this Contract.

2.1.4. Review of Initial GMP. Within five (5) Business Days of Design-Builder's submission of the Initial GMP to Owner, Design-Builder shall meet with Owner and Owner's Technical Advisor to review the Initial GMP, the updated Preliminary Project Schedule, and any supporting data and written clarifications or objections. The Initial GMP shall be based upon the most up-to-date Contract Documents prepared and/or received by Design-Builder at the time of submission of the Initial GMP. Further, the Initial GMP shall be based upon a schedule that meets the then established Milestone Dates, including the Substantial Completion Date as identified in the Milestone Schedule set forth in Exhibit D. Within fifteen (15) Business Days of the above meeting, Owner shall notify Design-Builder if Owner accepts or rejects the Initial GMP and updated Preliminary Project Schedule.

2.1.5. Continued Preparation. Subsequent to establishing the Initial GMP, the Design-Builder shall continue with the development of the Project design, including the preparation of the Design Development Documents and, as applicable, the Construction Documents for the Project and shall, at appropriate intervals agreed on between Design-Builder and Owner, prepare updated Estimates of Project Construction Costs with increasing detail and refinement and allowing for the further development of the design until the Design Development Documents are one hundred percent (100%) complete for the design development phase of the Project (approximately 60% design completion), at which time a detailed cost estimate shall be provided by the Design-Builder along with the 100% Design Development documents prepared in accordance with Exhibit W, Owner's Design Professional's Submission Requirements. Such Estimates of Project Construction Costs shall be provided for review by Owner and Owner's Technical Advisor. Design-Builder shall inform Owner and Owner's Technical Advisor when any Estimates of Project Construction Costs exceed the amount set forth for the Cost of the Work established in the Preliminary Cost Estimate or the Initial GMP and shall make appropriate recommendations to Owner how costs may be reduced, in addition to the procedures and limitations set forth elsewhere in this Contract

2.1.6. The Guaranteed Maximum Price.

2.1.6.1. Working in conjunction with Owner and Owner's Technical Advisor to continue to assess the level of completion of the Project design, Design-Builder shall thereafter provide to Owner and Owner's Technical Advisor for review and Owner's approval a set of design documents representing approximately eighty percent (80%) of the overall required design submission by the Design-Professional. Upon written approval by Owner that the submitted Documents for the Project are complete and in compliance with Exhibit W, Design-Builder shall have fourteen (14) Days in which to submit a final GMP (the "GMP") with supporting data and any written clarifications or objections for review and approval by Owner.

2.1.6.2. Based upon the GMP design submission at approximately eighty percent (80%) design completion, Design-Builder shall propose a final project schedule ("**Project Schedule Proposal**") that includes the final Milestone Dates and that is consistent with the project controls procedures in the Contract Documents, including General Requirements, Sections 013100 and 013200, further defining those Milestone Dates previously established between the parties.

2.1.6.3. The final GMP shall be comprised of the sum total of the (i) estimated Allowable Construction Costs identified in Exhibit JJ; (ii) Design-Builder's Fixed-Fee for Design Services; (iii)

Design-Builder's Fixed Fee for Preconstruction Services; (iv) Design-Builder's General Conditions Costs as identified in Exhibit OO (based on a General Conditions estimate approved by the Owner); (v) Design-Builder's Fee for the construction phase (as calculated based on a percentage of the Allowable Construction Costs); (vi) the insurance and the bond costs required of Design-Builder; (vii) and the Design-Builder Contingency (as established as a fixed amount for the final GMP). For purposes of calculating the insurance cost, the bond costs, General Conditions, and Design-Builder's Fee on a percentage basis, the Allowable Construction Costs does not include Design Builder's Fixed-Fee for Design Services nor Design-Builder's Fixed-Fee for Preconstruction Services. The final GMP shall be divided into detailed line items, each of which represents Design-Builder's estimate, for purposes of establishing the final GMP, of a separate and distinct item of cost or related group of costs based on systems and trades related to the construction of the Project. Only the total GMP is guaranteed by Design-Builder, not each line item of the GMP.

2.1.7. Consistent Proposals. The final GMP shall be consistent with, and shall not exceed the Owner's Target Price. The final GMP may contain changes from prior Estimates of Project Construction Costs provided that Design-Builder provides a detailed explanation for each such change and each such change is approved by Owner.

2.1.8. Cost Reductions. If any Estimates of Project Construction Costs or the final GMP submitted by Design-Builder to Owner exceeds the Initial GMP, previously approved Estimates of Project Construction Costs, or Owner's Target Price, Design-Builder shall make appropriate recommendations to Owner and Owner's Technical Advisor how costs may be reduced, in addition to the procedures and limitations set forth elsewhere in this Contract. Unless otherwise approved in writing by Owner, any GMP submitted to the Owner shall not exceed the Initial GMP.

2.1.9. Not Used.

2.1.10. Allowances. If the Design Development Documents are not one hundred percent (100%) complete at the time the final GMP is submitted for approval, Design-Builder may include specific allowances, any clarifications, exclusions, and assumptions in the submitted final GMP for such items of Work until further development of the Drawings and Technical Specifications consistent with the Contract Documents and reasonably inferable therefrom.

2.1.11. Review of Final GMP. Within five (5) Business Days of Design-Builder's submission of the final GMP to Owner and Owner's Technical Advisor, Design-Builder shall meet with Owner and Owner's Technical Advisor to review the final GMP, the Project Schedule Proposal and any supporting data and written clarifications or objections. The final GMP shall be based upon the most up to date Contract Documents prepared and/or received by the Design-Builder at the time of submission of the final GMP. Further, the final GMP shall be based upon a schedule that meets the Milestone Dates, including the Substantial Completion Date as identified in the Milestone Schedule set forth in Exhibit D. Within fifteen (15) Business Days of the above meeting, Owner shall notify Design-Builder if Owner accepts or rejects the final GMP and Project Schedule Proposal.

2.1.12. Guaranteed Maximum Price. Upon acceptance by Owner of the final GMP, Project Schedule Proposal and the completed Design Development Documents upon which they are based, said documents shall become the GMP and the Project Schedule for the Project. Design-Builder acknowledges that the maximum amount the Owner shall be obligated to pay for the Work shall not exceed the GMP, and that the Date of Substantial Completion and all Milestone Dates set forth in the Project Schedule shall be met, subject to modifications only by Change Order as provided herein. Upon acceptance by the Owner, the GMP and Project Schedule shall be memorialized by a Change Order that is exclusive of any mark-up set forth in the provisions of General Conditions, Article 7.

2.1.13. Pre-GMP Costs. Any Allowable Construction Costs, costs paid as a part of Design-Builder's Fixed-Fee for Design Services and Design-Builder's Fixed-Fee for Preconstruction Services prior to Owner's acceptance of the final GMP and Project Schedule Proposal, shall be included in the final GMP.

2.1.14. Absolute Limit to Amount Payable for Construction Work. In the event additional amounts are required to be expended over and above the GMP to perform the Work, achieve the Milestone Dates, or otherwise to perform any Defective Work or Warranty Work, liability for and payment of such additional amounts shall be the

sole responsibility of the Design-Builder. The Owner shall not be liable for any such amounts, and the Design-Builder shall not pursue any claim for any such additional amounts against the Owner. Notwithstanding the fact that the Design-Builder's Fee is an amount attributable to profit, mark-up and general or indirect overhead, the Design-Builder acknowledges that (1) the Owner is not guaranteeing the Design-Builder any profit, or other such amount above the GMP, a particular level of profit, or the avoidance of any loss in the overall performance of the Work, and (2) the obligation of the Design-Builder to pay all sums necessary to complete the construction Work may result in a loss or in a profit, mark-up, and general or indirect overhead amount that is less than the profit, mark-up, and general or indirect overhead amount anticipated by the Design-Builder in the negotiated Design-Builder Fee and GMP.

2.1.15. Amounts Expended Over the GMP. If, at Final Completion, the Construction Price, including the Cost of the Work plus Design-Builder's markup, including markups for overhead and profit, exceeds the GMP, Design-Builder acknowledges that it is liable for any costs incurred over the GMP and that Owner shall not be liable for such costs. In the event that Design-Builder is terminated for cause pursuant to General Conditions, Section 11.01, Design-Builder's bonding company shall be responsible for all costs to complete the Project, including the entire Construction Price, if necessary. The balance between the final Construction Price and the GMP shall be for the account of the Design-Builder or its surety, as the case may be.

2.1.16. GMP Assumptions. Certain assumptions, exclusions, and exceptions underlying the GMP are set forth in Exhibit PP (the "**Assumptions, Exclusions, and Exceptions**").

2.2. Contingency.

2.2.1. Design-Builder Contingency Included in GMP.

2.2.1.1. The GMP shall include a "Design-Builder Contingency" that is intended to address only the risks set forth below: (a) an amount mutually agreed upon and monitored by the Design-Builder to cover Allowable Construction Costs for Work not fully developed at the 80% design submission, but are not the basis for a Change Order; (b) acceleration costs to meet schedule requirements only if a Recovery Schedule has been approved by the Owner in writing; (c) market conditions that could not be reasonably anticipated or mitigated and result in circumstances where the cost of an item exceeds the amount allocated to such item in GMP proposal; and (d) Subcontractor bankruptcy or failure to perform after Design-Builder's exhaustion of all reasonable efforts to compel performance. The Design-Builder Contingency shall be included as a line item in the Schedule of Values that the Contractor submits to the Owner for the Work. The Design-Builder shall notify the Owner of its intent to use the contingency and provide supporting documentation of its use in accordance with Article 7 of the General Conditions. The Design-Builder Contingency shall only be used for Allowable Construction Costs. No payments to the Design-Builder by Owner from the Design-Builder Contingency, allowances, and other line-item holds shall be made without prior written approval of Owner, which approval shall not be unreasonably withheld. Design-Builder shall provide backup documentation for all Design-Builder Contingency expenditures.

2.2.1.2. Not Used.

2.2.1.3. No additional fee shall be added to any Design-Builder Contingency expenditure without the Owner's prior written approval. Design-Builder shall keep track of all Design-Builder Contingency expenditures in a contingency log provided to Owner on at least a monthly basis, which such log shall detail the scope of the contingency work, the date of the contingency expenditure, the amount, and an explanation as to why the expenditure is an appropriate use of the Design-Builder Contingency.

2.2.1.4. Design-Builder shall invoice for any expenditures from the Design-Builder Contingency on a monthly basis as part of its regular pay application procedure. Design-Builder shall provide supporting documentation of contingency expenditures in accordance with Article 7 of the General Conditions and receive approval from Owner. Design-Builder shall account to Owner for the allocation of the Design-Builder Contingency and other line-item hold backs such as allowances in a manner acceptable to the Owner. Expenditures from the Design-Builder Contingency shall be considered in the same way as other line items on the Schedule of Values, and are subject to approval by Owner. Owner will reallocate the approved Design-Builder Contingency expenditure to a new line in the Schedule of Values and make a

corresponding credit to the Design-Builder Contingency line in the Schedule of Values. Design-Builder may not transfer unused allowance funds from one budget category to a separate budget category as a line-item transfer without the prior written approval of the Owner. Unused portions of the Design-Builder Contingency and allowances shall remain the property of and revert to the Owner at the end of the Project.

2.2.1.5. The Design-Builder acknowledges and agrees that the Design-Builder Contingency is the maximum amount available to the Design-Builder to cover costs associated with such Design-Builder-managed risks, and that any costs incurred in excess of the Design-Builder Contingency attributable to such risks shall be excluded from the Allowable Construction Costs and borne by the Design-Builder. Design-Builder further acknowledges and agrees that the Design-Builder Contingency shall not be available for any purpose resulting from, relating to, or arising from any material breach or material failure to perform by Design-Builder, any Subcontractor (except as necessary to replace any Subcontractor because of bankruptcy or failure of such party to perform as provided in Section 2.2.1.1), or for any costs specifically excluded from the Allowable Construction Costs pursuant to Exhibit JJ, Section 1.3, Costs Excluded from the Allowable Construction Costs. Design-Builder shall be entitled to payment of amounts against Design-Builder Contingency solely in accordance with this Section 2.2.

2.2.1.6. Not Used.

2.2.2. Use of Value Engineering.

2.2.2.1. With each Application for Payment, the Design-Builder shall submit a report to the Owner identifying the Project savings generated by the Design-Builder through the submitted Application for Payment (the “**Potential Savings**”). The identified Potential Savings shall be made up of savings from the following: (i) value engineering as initiated by the Design-Builder and accepted by the Owner; and (ii) any savings developed by reason of a clarification in the scope of the Work, including savings as Work performed identified allowances identified in the GMP. Any Potential Savings to the Project generated by value engineering as described in Section 2.2.2.1 (i), above, shall be credited to the Owner through a deductive Change Order reducing the GMP in the Application for Payment that follows the Owner’s acceptance of the proposed value engineering solution. Any Potential Savings as described in Section 2.2.2.1 (ii), above, shall be left in the respective individual line items of the sworn statement until such time as described in Contract Section 2.2.2.4.

2.2.2.2. Not Used.

2.2.2.3. Not Used.

2.2.2.4. Any identified Potential Savings described in Contract Section 2.2.2.1 (ii) relating to “**allowances**” shall likewise be credited to the Owner by way of a deductive Change Order reducing the GMP; provided, however, the Design-Builder may wait to issue such deductive Change Order(s) for allowance-related Work after the Design-Builder has completed each specific scope of Work for which an allowance was included in the approved amount for that specific scope of Work.

2.2.2.5. Not Used.

2.3. Not Used.

2.4. Subcontract Allowance. The Parties acknowledge and agree that the establishment of specific allowances in Subcontracts entered into for the Construction Work may be included for portions of Construction Work that cannot be specified with sufficient particularity for the competitive bidding or competitive proposal process conducted by the Design-Builder (each such allowance being a “**Subcontract Allowance**”). All Subcontract Allowances are subject to the pre-approval of the Owner and shall be included in Subcontractor bidding documents and award letters. The Design-Builder shall provide the Owner with an Allowance Allocation Approval request establishing the amount to be drawn upon against a Subcontract Allowance and the associated GMP and the Design-Builder shall have no entitlement to such amount prior to the issuance of an Allowance Allocation by the Owner. Subcontract Allowances may be increased as necessary to cover the

costs incurred against the stated allowance with the Owner's approval by Change Order. Amounts incurred against all Subcontract Allowances shall be Allowable Construction Costs, and are subject to the Guaranteed Maximum Price. The amount not expended in each Subcontract Allowance shall be for the account of the Owner.

2.5. Design-Builder's Fixed-Fee for Design Services. Design-Builder shall perform all design and design-related services, as described in greater detail in Exhibit W, Design Professional Submission Requirements, and the General Conditions, Sections 4.22 and 4.23, in preparing the Schematic Design Documents, the Design Development Documents, the Construction Documents, and the Technical Specifications for a fixed amount equal to \$ [REDACTED] ("**Fixed-Fee for Design Services**"). In the event of a change in the Scope of Work such that additional design-related services are necessary, Design-Builder shall submit a request for such additional services pursuant to the applicable provisions of the General Conditions. Design-Builder's Fixed-Fee for Design Services shall be separately and clearly identified in each Application for Payment.

2.6. Design-Builder's Fixed-Fee for Preconstruction Services. Design-Builder shall perform certain preconstruction services in conjunction with the development of the Design Documents, including meetings with Design-Builder's Architect (and their Subcontractors and consultant's, respectively), Owner, and Owner's Technical Advisor on, among other things, proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall provide recommendations consistent with the Project requirements on constructability; availability of materials and labor; time requirements for procurement, construction, and commissioning; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, possible cost reductions, design review, value engineering, evaluation of construction documents, and other preconstruction services as required by the Owner (collectively "**Preconstruction Services**"). Such Preconstruction Services shall be performed for a fixed amount equal to \$ [REDACTED] ("**Fixed-Fee for Preconstruction Services**"). In the event of a change in the Scope of Work such that additional Preconstruction Services are necessary, Design-Builder shall submit a request for such additional services pursuant to the applicable provisions of the General Conditions. Design-Builder's Fixed-Fee for Preconstruction Services shall be separately and clearly identified in each Application for Payment.

2.7. Design-Builder's Fee. Following the Effective Date, the "**Design-Builder's Fee**" shall be an amount equal to [REDACTED] % of the actual Allowable Construction Costs identified in Exhibit JJ, Section 1.2, (Allowable Construction Costs) for the construction phase, and subject to the GMP in accordance with this Article. The Design-Builder's Fee is an amount attributable to profit, mark-up, administration, and general or indirect overhead with respect to the Allowable Construction Costs, subject to Contract, Subsection 2.1.14 (Absolute Limit to Amount Payable for Construction Work). Unless otherwise approved by Owner in a Change Order, it is specifically understood that the Design-Builder's Fee does not apply to any Work that is self-performed by the Design-Builder or an Affiliate, the Design-Builder Contingency, the Bonds Fee, or the Insurance Fee. Except as expressly set forth otherwise in the General Conditions, the Design-Builder's Fee shall not be subject to increase in any manner whatsoever. The Design-Builder's Fee shall be separately and clearly identified in each Application for Payment.

ARTICLE 3. CONTRACT DOCUMENTS

3.1. Contract Documents. The Contract Documents shall consist of the:

- 3.1.1. Design-Build Contract for the Design, Procurement, Construction, and Commissioning of the Life Sciences Public Health Laboratory Project in Albany, New York, including all Exhibits and Schedules thereto;
- 3.1.2. the General Conditions of the Work;
- 3.1.3. the General Requirements for the Work;
- 3.1.4. the Construction Documents, including all Drawings and Technical Specifications;
- 3.1.5. any final conformed specifications (or sealed design drawings provided by Design-Builder as identified in the Drawings and Technical Specifications);

3.1.6. the Basis of Design; and

3.1.7. all duly executed Change Orders to the Contract Documents made in writing after execution of this Contract including, but not limited to, the GMP and Project Schedule.

3.1.8 The Order of Interpretation of the Contract Documents shall be as set forth in General Conditions, Section 2.09.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the Day and year first above written. 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.

DESIGN-BUILDER

DASNY

Printed Name

Printed Name

Signature

Signature

Title

Title

Date

Date

By: _____
one of its co-venturers

By: _____

Its: _____

By: _____
one of its co-venturers

By: _____

Its: _____

ACKNOWLEDGEMENT OF OFFICER OF OWNER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the _____ day of _____ in the year 20 ____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of the _____, the corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Notary Public

ACKNOWLEDGEMENT, IF A CORPORATION

STATE OF _____)
COUNTY OF _____) ss:

On this ___ day of _____ in the year 20__, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of _____, the corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Notary Public

ACKNOWLEDGEMENT, IF A PARTNERSHIP

STATE OF _____)
COUNTY OF _____) ss:

On this ___ day of _____ in the year 20__, before me personally came _____, known to me to be a member of the firm _____, described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for and in behalf of said firm for the uses and purpose mentioned therein.

Notary Public

ACKNOWLEDGEMENT, IF AN INDIVIDUAL

STATE OF _____)
COUNTY OF _____) ss:

On this ___ day of _____ in the year 20___, before me personally came _____, known to me to be the person described in and who executed the foregoing instrument and he duly acknowledged that he executed the same.

Notary Public

**ACKNOWLEDGMENT OF DESIGN-BUILDER,
IF A LIMITED LIABILITY COMPANY**

STATE OF _____)

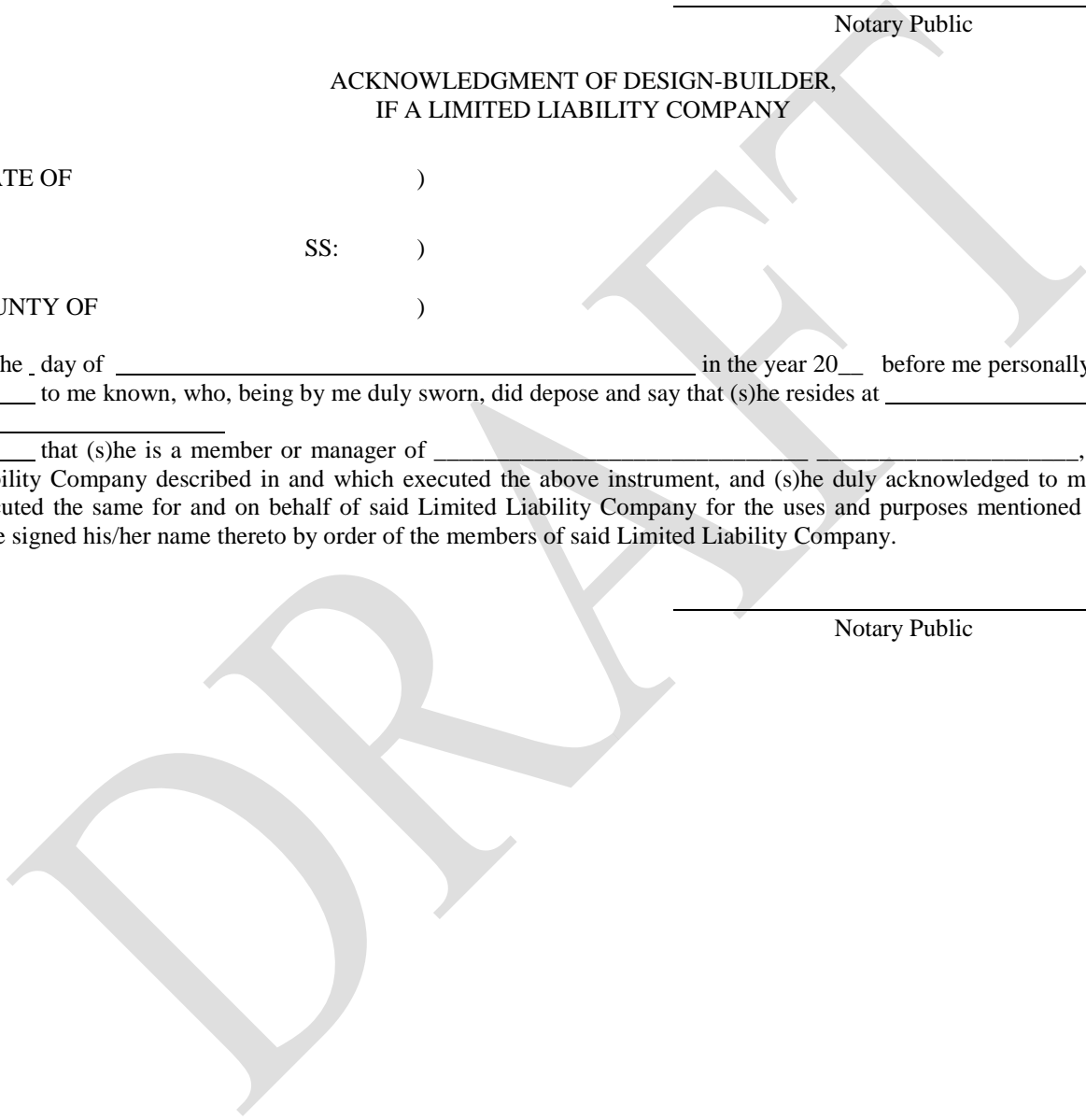
SS: _____)

COUNTY OF _____)

On the _ day of _____ in the year 20___ before me personally came _____ to me known, who, being by me duly sworn, did depose and say that (s)he resides at _____

_____ that (s)he is a member or manager of _____, the Limited Liability Company described in and which executed the above instrument, and (s)he duly acknowledged to me that (s) he executed the same for and on behalf of said Limited Liability Company for the uses and purposes mentioned therein, and (s)he signed his/her name thereto by order of the members of said Limited Liability Company.

Notary Public



**CERTIFICATION OF NON-SEGREGATED FACILITIES;
NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND
COMPLIANCE WITH FEDERAL EQUAL EMPLOYMENT OPPORTUNITY ACT;
COMMITMENT TO NEW YORK STATE BUSINESS ENTERPRISE;
AND NON-COLLUSIVE BIDDING REQUIREMENT**

1. The DESIGN-BUILDER certifies that the DESIGN-BUILDER or its Subcontractors does not, nor shall not, maintain or provide for the employees of such DESIGN-BUILDER or Subcontractor any segregated facilities at any establishments, of such DESIGN-BUILDER or Subcontractor, and that the DESIGN-BUILDER or Subcontractor shall not permit any employees, of such DESIGN-BUILDER or Subcontractor, to perform services at any location, under the control of such DESIGN-BUILDER or Subcontractor, where segregated facilities are maintained. The DESIGN-BUILDER or Subcontractor agrees that a breach of this certification is a violation of the equal opportunity clauses of the Contract. The DESIGN-BUILDER or Subcontractor further agrees that, except in any instance in which the DESIGN-BUILDER or Subcontractor has obtained identical certifications from proposed Subcontractors for specific time periods, such DESIGN-BUILDER or Subcontractor shall obtain identical certifications from proposed Subcontractors prior to the award of subcontracts exceeding Ten Thousand Dollars (\$10,000.00); that such DESIGN-BUILDER or Subcontractor shall retain such certifications in the files of such DESIGN-BUILDER or Subcontractor.

2. The DESIGN-BUILDER or Subcontractor further stipulates that it, and any individual or legal entity in which the DESIGN-BUILDER or Subcontractor holds a ten percent (10%) or greater ownership interest and any such entity that holds such an interest in the DESIGN-BUILDER or the Subcontractor, either:

(i) has no business operations in Northern Ireland; or

(ii) shall take all lawful steps in good faith to conduct any business operations it has or in which it has such an interest in Northern Ireland in accordance with the MacBride Fair Employment Principles as set forth in Chapter 807 of the Laws of 1992 and shall permit any independent monitoring of its compliance with said Principles.

3. The DESIGN-BUILDER attests to its compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

4. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subconsultants, subcontractors, and suppliers on its procurement contracts. Information on the availability of New York State subconsultants, subcontractors, and suppliers, including the Directory of Certified Minority and Women-Owned Business Enterprises, is available from the New York State Department of Economic Development.

5. The Omnibus Procurement Act of 1992 (as amended) requires that by signing this bid/proposal, the DESIGN-BUILDER certifies that whenever the total bid amount is greater than \$1 million:

(i) The DESIGN-BUILDER has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers, subconsultants, and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the Owner.

(ii) The DESIGN-BUILDER agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the **Job Service Division** of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The DESIGN-BUILDER agrees to document these efforts and to provide said documentation to the Owner upon request.

On contracts of One Million Dollars or more, the DESIGN-BUILDER acknowledges notice of the requirement to cooperate with New York State in efforts to obtain offset credits from foreign countries as a condition of contract award.

6. In accordance with Section 139-d of the NYS State Finance Law, if this contract was awarded based upon the submission of bids, the DESIGN-BUILDER warrants, under penalty of perjury, that its bid was arrived at independently and

without collusion aimed at restricting competition. The DESIGN-BUILDER further warrants that, at the time the DESIGN-BUILDER submitted its bid, an authorized and responsible person executed and delivered to the Owner a non-collusive bidding certification on the DESIGN-BUILDER behalf.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(Name and Title of Certifier-Please Type)

(Signature)

(Date)

DRAFT

EXHIBIT A

DASNY

DORMITORY AUTHORITY STATE OF NEW YORK

WE FINANCE, BUILD AND DELIVER.

General Conditions of the Work

**CORPORATE
HEADQUARTERS**

515 Broadway
Albany, New York
12207-2964

T 518.257.3000
F 518.257.3100

NEW YORK OFFICE

One Penn Plaza, 52nd Fl.
New York, New York
10119-0098

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

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ARTICLE 1 - DEFINITIONS

Section 1.01 - Definitions.

The following definitions shall apply to the Contract Documents. The singular shall include the plural and the masculine shall include the feminine, as the context requires. The terms “**includes**” or “**including**” shall mean “**including, but not limited to.**” Any term not defined in this Article, but that is in an Article, Section, Subsection, Exhibit, or Change Order shall have the meaning ascribed therein. The following terms as used in the Contract Documents shall be defined as follows:

“**Activity ID**” means a unique activity identification number, full description, planned duration, remaining duration, percent complete, and calendar identification.

“**Affiliate**” means any Person or entity controlling, controlled by, or under common control or ownership with Owner or Design-Builder, including parent, subsidiary, and related companies of Owner and Design-Builder.

“**Allowable Construction Costs**” shall have the meaning provided in Contract, Exhibit JJ.

“**Application for Payment**” means the monthly invoices substantially in the form of Exhibit V submitted by Design-Builder pursuant to General Conditions, Article 8 for payments due for Work completed under the Contract Documents.

“**As-Built Drawings**” mean drawings and other documents, including record documents, prepared by Contactor as required in the Contract Documents, including Exhibits C and R that are required to be conformed to construction records that reflect changes made during the construction process, recording differences between the original design and the completed structure.

“**Baseline Schedule**” shall have the meaning set forth in General Requirements, Section 013200.

“**Basis of Design**” means the set of preliminary plans, specifications, drawings, sketches, instructions requirements, equipment lists, procedures, and other data provided by the Owner to the Design-Builder dated February 25, 2019 and attached hereto as Exhibit O to define the Project and Design-Builder’s initial scope for the development of the Design-Builder’s Drawings and Technical Specifications for the Work. The Basis of Design includes initial data that could form the basis of inspection and test acceptance criteria and guidance on the performance and operational requirements of the Project and its systems.

“**Beneficial Occupancy**” means the stage in the performance of the Work prior to Substantial Completion when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents, so that the Owner or Client can occupy or utilize such portion of the Work for its intended use, as evidenced by the Notice of Beneficial Occupancy executed by the Owner.

“**Beneficial Occupancy Completion Certificate**” means a certificate in the form of Exhibit GG executed by Owner to Design-Builder confirming that Beneficial Occupancy of a portion or component of the Project has occurred.

“**Bonds Fee**” shall have the meaning provided in Contract, Exhibit JJ, Subsection 1.4.1.

“**Business Day**” means any Day except Saturday, Sunday, or a weekday that is observed by Owner, or that is recognized by the PLA (if applicable) or other controlling labor agreement applicable to the Project, as a holiday.

“**Certificate of Final Completion**” means the document identified in Contract, Exhibit GG executed by Owner to Design-Builder confirming that Final Completion has occurred.

“**Change Order**” means a written Notice, in the form provided by Owner, to the Design-Builder, signed by the Design-Builder and executed by the Owner changing the Contract in accordance with General Conditions, Article 7.

“**Claim**” means a demand by the Design-Builder seeking, as a matter of right pursuant to General Conditions, Article 10, adjustment or interpretation of Contract terms, payment of money, an extension of time or other relief with respect to the

terms of the Contract. The term Claim also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract.

“Client” means the New York State Department of Health (“DoH”), the entity for which the Owner is performing services, including subsidiaries, agents, related corporations or fiduciaries of DoH.

“Concurrent Delay” shall have the meaning set forth in General Conditions, Article 7.

“Confidential Information” shall have the meaning set forth in General Conditions, Section 23.02.

“Construction Aids” means any and all materials, supplies, construction tools, cranes, scaffolds, staging, ladders, stairs, ramps, runways, platforms, railings, hoists, chutes, and other construction equipment, temporary structures, field office equipment, field office supplies, form lumber, and all other items provided by Design-Builder as part of, or necessary for, completion of the Work, but that are not intended to become a permanent part of the Project.

“Construction Documents” means all of the Submittals, Drawings, design plans, Technical Specifications, calculations, Product Data, technical data and other documents prepared by the Design-Builder or its Subcontractors, and reviewed by Owner, that set forth in full the design show the scope, extent, and character of the Work to be furnished and performed by Design-Builder or its Subcontractors.

“Construction Equipment” means any and all Design-Builder-provided equipment, machinery and tools that are used to complete the Work, but which does not become a permanent part of the Facility.

“Construction Price” means the total cost incurred by the Design-Builder, including Design-Builder’s Fee and any other mark-ups so charged, to complete Design-Builder’s performance of the Work and any other obligations of the Design-Builder under the Contract Documents.

“Consumables” means items that include, but are not limited to, the following: ultra-low sulfur diesel (ULSD) fuel, fresh water supplies, compressed air or gases; chemicals; oils; lubricants; cleaning materials; demineralized water; valve packing; lamps; light bulbs; anti-freeze; aqueous ammonia; catalyst; paper; gaskets; air, gas, and fuel filters; hydraulic fluids; insulation; fire suppressants; refrigerants; and comparable items which, by Prudent Industry Practice, are considered consumables and are replaced on a regular basis, required for cleaning, preparing, or completing the Work, or are required for the proper operation of the Facility’s systems and equipment.

“Contract” means the agreement consisting of the Contract Documents between Owner and Design-Builder based on a Guaranteed Maximum Price for the design, procurement, construction, start-up, commissioning, and reliability demonstration testing of the Project.

“Contract Closeout” means final completion and acceptance of the performance of the Work pursuant to the terms of the Contract Documents as evidenced by the issuance of a Certificate of Final Completion and Final Payment to the Design-Builder by the Owner.

“Contract Documents” means those documents making up the Contract for Design-Build Work, including the Contract; the Exhibits and Schedules thereto; these General Conditions of the Work; the General Requirements for the Work; the Design Development Documents and Construction Documents, including all Drawings and Technical Specifications; the Scope of Work and, after the Effective Date, any final conformed specifications (or sealed design drawings provided by Design-Builder as identified in the Scope of Work); the Basis of Design included in the RFP; all addenda issued prior to the execution of this Contract; any duly executed Change Orders, and any other documents identified in this Contract as being incorporated into the Contract Documents including, but not limited to, the GMP and Project Schedule.

“Contracting Party” shall have the meaning set forth in General Conditions, Section 6.09 of the Contract.

“Preliminary Cost Estimate” means the total amount estimated by the Design-Builder to perform the Work for the Project, including the estimated Allowable Construction Costs + the Design-Builder’s Fixed-Fee for Design Services + the Design-Builder’s Fixed Fee for Preconstruction Services + the Design-Builder’s Fee for the construction phase (based on a percentage basis of the Allowable Construction Costs) + Design-Builder’s General Conditions (based on a general conditions estimate provided by the Design-Builder) + the insurance costs + the bond costs + the Design-Builder’s Contingency (based on a percentage basis of the Allowable Construction Costs). The Preliminary Cost Estimate is an overall baseline for the

estimated total cost of the Project and the timely performance of the Work, but it is not the Initial GMP nor the final GMP that is to be provided by the Design-Builder to the Owner.

“**Cost of the Work**” shall have the meaning set forth in Contract, Exhibit JJ Section 1.1.

“**Crane Plan**” shall have the meaning set forth in General Conditions, Section 5.02 (D) (5).

“**Critical Path**” shall have the meaning set forth in General Requirements, Section 013200 1.3 (K).

“**Critical Path Method**” or “**CPM**” shall have the meaning set forth in General Requirements, Section 013200 1.3 (I).

“**Day**” means a calendar day commencing at 12:00 a.m. All dates will be calendar days unless specified otherwise in the Contract Documents.

“**Defective**” or “**Defect**” means the Work, or any portion thereof, that is not performed in accordance with the Contract Documents, including all Drawings and Technical Specifications.

“**Delivery Point**” or “**Deliver**” for all Materials, Construction Aids, Consumables, and Construction Equipment has the meaning set forth in Contract, Subsection 5.10 (D).

“**Design-Builder**” means [REDACTED] a [REDACTED] corporation, having an office at [REDACTED].

“**Design-Builder Contingency**” shall have the meaning set forth in Section 2.2.1.1 of the Contract.

“**Design-Builder’s Design Professional**” or “**Design-Builder’s Architect**” shall mean person, persons, firm, partnership, or corporation who will perform (or cause to be performed through Design Subcontractors acceptable to the Owner) all architectural, engineering, or other professional services required under the Contract and will serve as the “Architect of Record” or “Engineer of Record” for the Project. The Design-Builder’s Design Professional shall not be replaced by any other entity, except as otherwise permitted in this Contract.

“**Design-Builder’s Fee**” shall have the meaning set forth in Section 2.7 of the Contract.

“**Design-Builder’s Representative**” shall have the meaning set forth in General Conditions, Section 4.04 (A).

“**Design Development Documents**” means all Drawings and other documents that set forth in full the design of the Project and fix and describe in detail the size, configuration, and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including all architectural, civil, structural, fire protection, mechanical, heating, cooling, ventilation, electrical, plumbing, information communication systems, and other building systems, materials and such other elements as may be appropriate. Design Development Documents shall not be part of the Agreement, nor shall they constitute Contract Documents, until Design-Builder has submitted completed Design Development Documents to the Owner and they have been reviewed and approved in writing by the Owner in accordance with the procedures set forth in the General Conditions, Sections 4.22 and 4.23.

“**Design Phase**” means that period beginning with the Owner’s issuance of a Notice to Proceed-Design (the “Notice to Proceed-Design”), which notice shall be deemed issued by the Owner upon the Execution Date, during which phase Design-Builder shall cause the Design-Builder’s Design Professional to prepare the Schematic Design Documents, Design Development Documents and Construction Documents in accordance with the Contract Documents and as set forth in the Project Schedule.

“**Design Phase Submission Schedule**” shall have the meaning set forth in General Conditions, Sections 4.22 (L).

“**Design Professional Submission Requirements**” means the Owner’s requirements to which the Design-Builder’s Design Professional must comply for the submission of Schematic Design Documents, Design Development Documents, and Construction Documents outlining the minimum level of information to be presented for the schematic, design development, and construction document phases of the Project, and as further set forth in Exhibit W.

“Design Proposal Package” means those Schematic Design Documents, Design Development Documents, and Construction Documents, as completed to the percentage required and further defined in General Conditions, Section 4.22 (K).

“Design Subcontractor” or **“Design Subconsultant”** means any Subcontractor including, but not limited to, the Design-Builder’s Design Professional, or any other architect, engineer, or other design professional retained by Design-Builder to provide architectural, design, engineering, or similar professional services for the Project, including the preparation of shop drawings or any similar design-related services incidental thereto for any part of the Work.

“Design Work” means the architectural, engineering, surveying, and any other design-related services provided by Design-Builder as a part of the Work.

“Disputed Work Directive” shall have the meaning set forth in General Conditions, Section 10.01 (B).

“Drawings” shall mean the pictorial representations of the Work prepared by the Design-Builder.

“Effective Date” means the date upon which all of the following shall have occurred: (1) the execution and delivery of the Contract by the Parties; (2) in the event this Contract is subject to review and approval of any Governmental Agency, including the State Comptroller, such approval is given; (3) evidence of required insurance has been provided by the Design-Builder; and (4) the required performance and payment bonds have been provided by the Design-Builder or other mutually agreed to security.

“Engineer of Record” or **“Architect of Record”** shall mean the applicable professional engineer, structural engineer, or licensed architect retained or employed by Design-Builder or its Subcontractors, as set forth in General Conditions, Section 4.22 (F), who is qualified to seal and/or sign the Construction Documents, as required by Laws.

“Environmental Laws” means any and all Permits and all applicable codes, Laws, rules, and regulations relating to actual or potential effect on human health, safety, or the environment; the disposal of materials; the discharge or release of chemicals, gases, or other substances or materials into the environment; or the presence of such materials, chemicals, gases, or other substances and Hazardous Material Laws.

“Environmental Management Program” or **“EMP”** means Design-Builder’s environmental-related procedures and processes for construction activities that capture Design-Builder’s defined responsibilities for compliance with Hazardous Material Laws, environmental permit conditions, the management of Hazardous Waste generation by Design-Builder, and Design-Builder’s response to emergency situations during construction and Start-Up and Commissioning of the Facility, as further set forth in Exhibit Z.

“Executive Order” means a declaration made by the President of the United States or the Governor of the State of New York whose Laws govern the Project.

“Extra Work” means any work in addition to the Work initially required to be performed by the Design-Builder pursuant to the Contract Documents.

“Facility” means the whole or, where the context allows, part of the Owner’s new Life Sciences Public Health Laboratory project to be located and designed and constructed by Design-Builder pursuant to this Contract, including appurtenant facilities such as roads, walks, landscaping, parking, utility interconnects, office and buildings required for the Facility, to be designed, procured, constructed, commissioned, tested, and completed by Design-Builder in accordance with this Contract, together with the Materials and equipment to be provided hereunder.

“False Claim” means any Claim which is, either in whole or part, false or fraudulent.

“False Representation” means an action that takes place when a person has knowledge of the value of the work and materials supplied, performed, or proposed (the “Information”) constituting the claim, Change Order or Application for Payment and either (i) acts in deliberate ignorance of the truth or falsity of the Information or (ii) acts in reckless disregard of the truth or falsity of the Information.

“Final Completion” means that the Work is one hundred percent (100%) complete, in accordance with the Contract Documents, including General Conditions, Section 9.08.

“Final Completion Date” means the date on which the Design-Builder has met all of the requirements to complete the Work.

“Final Payment” means the last payment made from Owner to Design-Builder upon Design-Builder’s submission of its final Application for Payment pursuant to General Conditions, Section 8.07 and General Requirements, Section 012900 1.7.

“Forced Change Order” means a written Notice, in a standard Owner’s form, to the Design-Builder, without the Design-Builder’s signature and executed by the Owner changing the Contract Documents in accordance with General Conditions, Article 7.

“General Conditions” shall mean the cost items set forth in Exhibit OO of the Contract.

“GMP” or **“Guaranteed Maximum Price”** shall have the meaning set forth in Contract, Section 2.1.

“Governmental Agency” means any department, commission, board, regulatory authority, bureau, legislative body, agency, political subdivision, or instrumentality, and their successors, of any federal, state, local, or municipal government.

“Government Approval” means any Permit, license, authorization, consent, certification, exemption, ruling, entitlement, variance or approval issued by a governmental body of whatever kind and however described, which is required under applicable Law to be obtained or maintained by any person with respect to the Work, including construction permits and other governmental approvals.

“Guaranteed Reliability” has the meaning specified in Exhibit I (as referred to in the Technical Specifications, as the “Facility Reliability Test”). **DASNY reserves the right to issue an Addendum after the RFP is issued that will identify equipment and system performance parameters, guaranties, and liquidated damages.**

“Guaranteed Substantial Completion Date” means the contractually-required date for Substantial Completion for the Work as set forth in the Contract Documents, including Exhibit D, as such date may be changed from time to time in accordance with the Contract Documents.

“Hazardous Material Laws” collectively, means and includes any present local, state or federal Law relating to public health, safety or the environment including without limitation: the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1215 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq.; the Atomic Energy Act, 42 U.S.C. §2201 et seq.; the NYS Environmental Conservation Law and Title 6 of the New York Code of Rules and Regulations; the NYS Labor Law; the NYS Public Health Law; and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

“Hazardous Materials” means any substance (gas, liquid or solid) defined as a Hazardous Material under Hazardous Materials Laws.

“Hazardous Waste” means materials, substances and wastes defined as “hazardous waste” per the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. §6901 et seq. and in addition, any materials, substances or wastes (e.g., PCBs, asbestos) regulated under the Toxic Substances Control Act, as amended (“TSCA”), 15 U.S.C. §2601 et seq.

“Insurance Fee” shall have the meaning set forth in Exhibit JJ.

“Key Personnel” are Persons to be used by the Design-Builder in performance of the Work as defined in Exhibit G.

“Laws” or **“Law”** means (1) all applicable federal, state, and local laws, treaties, ordinances, codes, rules and regulations, Executive Orders, judgments, decrees, injunctions, writs and orders of any court, arbitrator, or Governmental Agency; (2) all applicable and generally recognized building and safety standards governing performance of the Work, including OSHA Laws, the Building Code of New York State, and all applicable construction standards issued by the Joint Commission and

other accrediting agencies and organizations; and (3) all applicable Environmental Laws and applicable Permits. Each and every provision of Law required by Law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract shall read and shall be enforced as though so included therein.

“Lien Waiver(s)” shall have the meaning set forth in General Conditions, Section 8.03.

“Lien(s)” means any mortgage, lien, pledge, claim, charge, lease, easement, servitude, right of others, security interest, or encumbrance of any kind arising out of the Work pursuant to any statutory or equitable right permitting mechanics, carriers, warehousemen, materialmen, artisans, and laborers to place a Lien against the Facility, the Project, Owner’s funds, or the Work, as the case may be, for the value of labor bestowed in connection therewith and/or materials furnished thereto.

“Losses” means claims, damages, losses, liabilities, penalties, costs, and expenses, including but not limited to reasonable attorneys’ fees.

“Major Subcontract” means any Subcontract having an aggregate value for work provided there under that exceeds two hundred fifty thousand dollars (\$250,000) USD.

“Major Subcontractor” means any Subcontractor with whom Design-Builder enters into a Major Subcontract.

“Material Lay-down, Storage, and Staging Plan” means Design-Builder’s plan as specified in General Conditions, Section 5.02 (D) (6), identifying and fully describing all material laydown areas, the shakedown sequence, any effect on the Crane Plan, and any coordination issues concerning Materials storage relating to the Work.

“Material Safety Data Sheet” or **“MSDS”** is the former term used for a Safety Data Sheet or SDS.

“Materials” means the materials, supplies, apparatus, equipment, machinery, and other goods to be provided by Design-Builder or any Subcontractor, as part of, or necessary for completion of, the Work and that become a permanent part of the Facility.

“MBE” means Minority Owned Business Enterprise as such phrase is defined under of the New York Consolidated Laws, Article 15-A of the Executive Law, in which the business enterprise is at least fifty-one percent (51%) owned, operated, and controlled by minority members who are citizens of the United States or permanent resident aliens, and who can demonstrate membership in of the following groups: black persons having origins in any of the black African racial groups; Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent; descent of either Indian or Hispanic origin, regardless of race; Native American or Alaskan native persons having origins in any of the original peoples of North America; and Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands. The Empire State Development Corporation, the Division of Woman-Owned Business, maintains a directory of certified WBEs for review.

“Means and Methods” means the day-to-day activities employed by the Design-Builder to perform all of the Work including, but not limited to, supplying or providing labor, Materials, supervision, Construction Aids, temporary structures, tools, plant, and Construction Equipment, and the manner and time of their use, necessary to accomplish the result intended by the Contract Documents.

“Milestone” means a scheduled event signifying the completion of a major deliverable or activity, a set of related activities or deliverables, or a specified portion of the Work.

“Milestone Dates” means the dates identified in Contract, Exhibit D on which Design-Builder must complete a specific Milestone.

“Mobilization Date” means the date upon which Construction Aids arrive on the Site.

“Modeling” means the use of digital electronic modeling software tools and physical modeling techniques to: (1) establish a computable representation of all or some portion of the physical and functional characteristics of the Work and its related life-cycle information; and (2) to serve as a repository of information for the Owner’s future use. Modeling may include a set of interrelated models that can exchange information between different software platforms and incorporate data from physical modeling techniques.

“Monthly Report” means the written report prepared by Design-Builder and delivered to Owner no less frequently as required by General Requirements, Section 013200, Subsection 3.2 (C), of the progress of the Work during the preceding month and on all matters deemed significant by Owner as further described in General Requirements, Section 013200, Subsection 3.2 (C) and Exhibit H.

“Notice” shall have the meaning set forth in General Conditions, Section 2.06 and shall be served in the manner set forth in such Section.

“Notice of Beneficial Occupancy” means written notice, in a standard Owner’s form attached hereto as Exhibit GG, to the Design-Builder, executed by the Owner and delivered to the Design-Builder prior to Substantial Completion, that certain Work of the Contract Documents, identified in such Notice of Beneficial Occupancy, satisfies the criteria for Beneficial Occupancy and will be occupied or utilized by the Owner or Client.

“Notice of Substantial Completion” means a written Notice, in a standard Owner’s form (attached hereto as Exhibit GG), to the Design-Builder, executed by the Owner, accepting the Work of the Contract Documents as meeting the requirements for Substantial Completion and constitutes the start of the Warranty Callback Period.

“Notice of Suspension” means the written Notice by Owner to Design-Builder to suspend, delay, or interrupt the Work in whole or in part for such period of time as Owner may determine.

“Notice to Proceed” means written Notice, signed by the Owner, to the Design-Builder, that acknowledges receipt by the Owner of the signed Contract and bonds from the Design-Builder and directs the Design-Builder to start performance of the entire scope of Work; or, as the case may be, written Notice, in a standard Owner’s form, to the Design-Builder, executed by the Owner, directing the Design-Builder to proceed in accordance with General Conditions, Article 7 – Changes in the Work.

“NYS” where used means New York State.

“Operating Emergency” means any equipment or Materials failure for which Owner is not at fault occurring anytime for equipment used to operate the Facility prior to energization of the all of the newly-constructed Work and after Substantial Completion, for newly-constructed Work and prior to the expiration of the Warranty Callback Period at the Facility which causes, or imminently will cause, a reduction in the services provided by the Facility unsafe operating conditions.

“OSHA” means the United States Department of Labor Occupational Safety and Health Administration.

“Other Owner Authorized Party” means any Person so designated by Owner pursuant to General Conditions, Section 4.04 (D).

“Owner”, “DASNY”, or “Dormitory Authority” means the Dormitory Authority of the State of New York, a public benefit corporation established by the Laws of the state of New York with its principal office located at 515 Broadway, Albany, New York, 12207-2964.

“Owner Administrative Fee” shall equal eight percent (8%) of Owner’s direct costs.

“Owner Indemnitees” shall have the meaning set forth in General Conditions, Section 14.09 (A).

“Owner's Target Price” shall have the meaning set forth in Contract, Section 2.1.1.1.

“Owner's Representative” means a person, persons, firm, partnership or corporation appointed by Owner pursuant to General Conditions, Section 4.04 (D) and any successors to act on behalf of the Owner.

“Permits” means all permits, permit applications, licenses, approved plans, contracts, filings, authorizations, approvals, easements or rights-of-way required by or entered into with any Governmental Agency and/or any other concerned parties in connection with the proper conduct and performance of the Work, including all building permits, contractor’s licenses, zoning and land use permits, environmental permits, conditional use permits, and all necessary licenses, authorizations, approvals, and permits obtained from any Governmental Agency or party.

“Person” means an individual, partnership, corporation, company, Limited Liability Company, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Agency, or other entity.

“Personnel” means Design-Builder’s and Subcontractor’s employees.

“Preliminary Project Schedule” shall mean the schedules prepared by the Design-Builder as part of its Work for completion of the Project based upon in-progress Drawings and Technical Specifications.

“Premises” means the areas including, but not limited to, all of Owner’s property, the Site where the Work is performed, and all other places where Materials, Construction Equipment, Construction Aids, tools or other facilities required for the performance of the Work are located or stored.

“Progress Reports” means the design, procurement, progress, and construction progress reports required by the Contract Documents.

“Project” means the total design, procurement, construction, and commissioning of the Work by Design-Builder carried out pursuant to the Contract Documents of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or Owner’s Separate Contractors.

“Project Contracts” shall have the meaning set forth in General Conditions, Subsection 6.09 of the Contract.

“Project Execution Plan” shall have the meaning set forth in General Conditions, Section 5.02 (D) (2).

“Project Management Program” means the electronic project management system software program used by the Owner to manage, monitor, and oversee performance of the Contract.

“Project Schedule” means the schedule developed in accordance with the Contract Documents (using CPM schedule development methodology) by Design-Builder to develop, maintain, and update, per the requirements of the Contract Documents, a fully integrated schedule covering all activities from engineering, procurement, construction, start-up, and commissioning of all systems necessary to achieve completion of the Work in accordance with the Milestone Dates contained in Exhibit D. The Project Schedule will include all of Design-Builder’s and its Subcontractors’ detailed activities, required to accurately monitor and report Work progress. The Project Schedule is considered to be the version of the schedule (interim baseline schedule, baseline schedule, or CPM schedule) that is approved by the Owner at that particular time/phase of the Project.

“Project Schedule Proposal” shall have the meaning set forth in Contract, Subsection 2.1.6.2.

“Prudent Industry Practice” means, with respect to each of the architectural, engineering, procurement, design, construction, Start-Up and Commissioning, operation, testing and maintenance of the Work, the standards, practices, methods, techniques, and acts engaged in or approved by Design-Builder that are in accordance with the quality generally recognized and accepted within the construction industry and using the same degree of professional skill, judgment, and abilities in performing the Work as professionals with significant experience in the design, construction, and administration of projects that are similar in scope, quality, and complexity to the Project.

“Punchlist” means administrative or other incomplete or non-conforming items of the Work that do not affect the safe testing, Start-Up and Commissioning or successful continuous operation of any component of the Work and which are to be corrected, fixed, or repaired by Design-Builder at its own expense as a condition to achieving Final Completion. The Punchlist shall be prepared in accordance with the procedure set forth in General Conditions, Section 9.05.

“Punchlist Reserve” has the meaning set forth in General Conditions, Sections 9.07 (B) (6) and 9.08 (A) (11).

“Relics” mean items with archeological or historical value or other valuable materials as defined in General Conditions, Subsection 3.02 (G) (2).

“Retainage” or **“Retention”** shall have the meaning set forth in General Conditions, Subsection 8.01 (E).

“Safety and Loss Control Program” is Design-Builder’s safety program set forth at Exhibit U and any other safety requirements provided by Owner.

“Safety Data Sheet” or **“SDS”** means written or printed material concerning a hazardous chemical that is prepared in accordance with paragraph 29 CFR 1910.1200(g).

“Samples” means physical examples of Materials or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

“Schedule of Values” means a detailed and itemized breakdown of the GMP into discrete values for specific Work activities, so that the payments to Design-Builder reflect the actual progress of the Work. The Schedule of Values is detailed in Exhibit E and establishes a minimum level of allocation of the GMP amount among the items of Work to formulate the Design-Builder’s billing requests and will serve as the basis for each monthly Application for Payment from the Design-Builder.

“Schematic Design Documents” means those documents that illustrate the scale and relationship of Project components and outline the nature of the structural exterior and three dimensional scale of buildings comprising the Project.

“Scope of Work” means the Design-Builder’s Scope of Work which includes: the design and construction of a new, multi-purpose Life Sciences Public Health Laboratory as described in the Basis of Design; the accepted portions of the Design-Builder’s technical proposal that are incorporated in the executed Contract; and the development and generation of contractually-required documentation, subsequent to the Effective Date, including drawings, specifications, reports, and models sufficient to construct the Project in accordance with the Contract Documents.

“SDVOB” means Service Disabled Veteran-Owned Business as such phrase is defined under the New York Consolidated Laws, Article 17-B of the Executive Law, in which the business enterprise is at least fifty-one percent (51%) owned, controlled and operated independently by service-disabled veterans and is a small business that has significant business presence in the State of New York. The New York State OGS maintains a directory of certified SDVOBs for review.

“Separate Contractor” means a person, persons, firm, partnership or corporation that has contracted separately with Owner, including, if applicable, Owner’s Technical Advisor, Owner’s Commissioning Authority, and other contractors or consultants retained by Owner to furnish services or perform operations on or adjacent to the Site for Owner throughout the term of this Contract. The Design-Builder shall cooperate with Owner’s Separate Contractors.

“Shop Drawings” means all drawings, diagrams, fabrication drawings, illustrations, schedules, test product data, performance charts, catalog cuts, product data and other data or information which are specifically prepared or assembled by or for Design-Builder and submitted by Design-Builder to Owner to illustrate some portion of the Work.

“Site” shall mean the location of the Project as indicated by the Contract Documents.

“Solid Waste” means any substance (gas, liquid or solid) defined as a Solid Waste under the NYS Environmental Conservation Law and Title 6, Part 360, 366 & 369 of the New York Code of Rules and Regulations.

“Start-Up and Commissioning” means the tasks required to make the Facility, equipment, Materials, systems or subsystems operate and includes the receipt of construction turnover packages, walk downs, identification of Punchlist items, pre-operational checkout and testing, operational checkout and testing, and operational turnover packages to the Owner.

“Stop Work Order” means a written Notice identified in General Conditions, Sections 11.05 and 15.05, signed by the Owner, to the Design-Builder, to cease or hold Work of the Contract Documents.

“Storm Water Pollution Prevention Plan” or **“SWPPP”** means the Contract Document prepared by Design-Builder and one of the documents contained within Exhibit BB.

“Subcontract” means any agreement, purchase order, contract, lease, or other agreement between Design-Builder and any Subcontractor, Person or entity to furnish services, labor, materials, or equipment for the Project.

“Subcontractor” means any individual or entity, including agents, suppliers, vendors, materialmen, and consultants (including design professionals), of any tier that has a Subcontract with Design-Builder to perform any part of the Work, or a contract with any of Design-Builder’s Subcontractors for the performance of any part of the Work.

“Submittal Schedule” shall have the meaning set forth in General Conditions, Section 4.24 and Exhibit R of the Contract.

“Submittals” mean all Shop Drawings, Samples, procurement documents, design and engineering reports, and other documents that are prepared by Design-Builder or a Subcontractor and submitted by Design-Builder for Owner or Owner’s Technical Advisor to review as required by Exhibit R for the purpose of illustrating how the Design-Builder proposes to conform to the requirements of the Contract Documents.

“Substantial Completion” means the Work has progressed to the point where, in the reasonable opinion of Owner as evidenced by the issuance of a definitive Notice of Substantial Completion (Exhibit GG), it is substantially complete, in accordance with the conditions precedent to Substantial Completion as set forth in the Contract Documents.

“System Turnover” means the acceptance of completed portion(s) of the Work pursuant to the applicable provisions of the General Conditions, Section 9.04, the General Requirements, and Exhibit AA.

“Team” or **“Team Members”** means each and every individual, partnership, corporation, or firm that make up the entirety of the Design-Builder, including the Design-Builder, the Design-Builder’s Design Professional, and the Key Personnel that are identified in Exhibit G.

“Technical Advisor” means a person, persons, firm, partnership or corporation providing architectural, engineering, or other professional services, which has been engaged by the Owner to consult with the Owner regarding the Basis of Design upon which Design-Builder will base its design for the Project as identified in Exhibit C, as well as the performance of Design-Builder’s professional architectural and engineering design services for the remainder of the Project. Owner’s Technical Advisor will assist Owner in the review and analysis of each package of design plans, Drawings and Technical Specifications prepared by Design-Builder in conformance with the requirements of the Contract Documents for each component of the Project and for certain contract administration activities as described herein. Owner shall have the right, from time to time, to replace such Technical Advisor (and any replacement thereof). Design-Builder shall be consulted, but Design-Builder’s approval shall not be required. As used in this Contract, the word “Technical Advisor” also includes the structural, mechanical, electrical and other architects, engineers, inspectors, inspection agencies, and all other consultants normally and customarily retained by an architect or owner to review and evaluate the design elements of Design-Builder’s design, including inspecting and commissioning the construction of a complete building structure and all of its systems and appurtenances.

“Technical Specifications” means the specifications prepared by Design-Builder and incorporated herein as Exhibit C that are reviewed and verified by Owner and Owner’s Technical Advisor and are part of the Contract Documents and establish the corresponding requirements including the technical requirements specific to and pertinent to the Work. The Technical Specifications include those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work, and certain administrative details applicable thereto.

“Underground Facilities” means all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, buried structures or other such installations, facilities or attachments within the construction limits of the Work and elsewhere, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, oil, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

“Warranty Callback Period” means the period of time Design-Builder is obligated to perform Warranty Work pursuant to General Conditions, Section 13.06 (D).

“Warranty Work” shall have the meaning set forth in General Conditions, Article 13.

“WBE” means Women Owned Business Enterprise as such phrase is defined under the New York Consolidated Laws, Article 15-A of the Executive Law, in which the business enterprise is at least fifty-one percent (51%) owned, operated, and controlled by citizens of the United States or permanent resident aliens and who are women. The Empire State Development Corporation, the Division of Woman-Owned Business, maintains a directory of certified WBEs for review.

“Work” means all of the services, labor, and Materials to be provided by Design-Builder for the design, engineering, Modeling, procurement, manufacturing, fabrication, distribution, demolition, construction, supervision, project management

and coordination, licensing, permitting, zoning, code review and approval, safety management, oversight, surveying, scheduling, testing and inspection, quality assurance, vendor surveillance, corrective action, materials management and handling, training, pre-commissioning, Start-Up and Commissioning, testing (including Performance Tests), and other related Work required or reasonably inferable from the Contract Documents for the total design, construction, installation, furnishing, equipping, and functioning of the Project in accordance with the terms of the Contract Documents, together with all additional, collateral, and incidental items, work, services, and all other obligations imposed on the Design-Builder by the Contract Documents. The Work also includes completion of any and all off-site work and improvements that are reasonably required in order for Design-Builder to complete the Work including, without limitation, off-site work that is not specifically identified in the Basis of Design, but is reasonably inferable therefrom. Design-Builder shall also provide full and complete training of the Owner's representatives, agents, and employees in the use and operation of the completed Project, and its facilities and equipment.

“**Work Plan**” shall have the meaning set forth in General Conditions, 5.02 (D) (1).

“**Work Product**” has the meaning set forth in General Conditions, Section 23.01.

ARTICLE 2 - CONTRACT DOCUMENTS

Section 2.01 - Correlation and Intent of Contract Documents.

A. Correlation and Intent. The Owner's General Conditions and General Requirements, attached hereto as Exhibits A and B, respectively, shall apply to the Work of this Contract and to all Work performed by the Design-Builder and its Subcontractors. Defined terms used herein and not otherwise defined shall have the meaning ascribed to them in the General Conditions; however, 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.

B. Complementary Provisions. The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work; provided, however, the enumeration of any portion of the Work shall not be construed to exclude other items contemplated by or reasonably inferable from the Contract Documents.

C. Inconsistent Provisions in Bid Proposal. No terms or conditions inconsistent with the Contract Documents (whether contained in Design-Builder's bid proposal or other document) shall be effective unless included in the Contract Documents or agreed to in writing and signed by Owner after the Effective Date. Owner's notification of objection to different terms and conditions not agreed to in writing is hereby given.

D. Not Used.

E. Captions. The tables of contents, titles, captions, headings, running headlines, and marginal notes contained herein and in the Contract Documents are for convenience only and are solely to facilitate reference to various provisions of the Contract Documents. Such information shall not (1) be considered as part of this Contract in any respect, (2) in any way affect the substance of any provisions contained in this Contract, and (3) affect the interpretation of the provisions to which they refer. The words “**herein**,” “**hereof**,” “**hereunder**,” and words of similar import shall be construed to refer to the particular Article, Subarticle, Section, Subsection, Exhibit, or paragraph of which it is a part unless the context requires otherwise.

F. Interpretation. Reference to any contract, document or drawing shall include each amendment, modification and supplement thereto. Any term defined by reference to any other contract or document shall have such meaning whether or not such contract or document remains in effect. A reference to any specific Law includes any amendment or modification to such Law. A reference to any Person, Party, company, corporation, partnership, or other entity includes its/their permitted successors and assigns. Materials or other Work not defined or specified in the Contract Documents but described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Contract Documents. If any provision of this Contract contemplates that the Parties shall negotiate or agree to any matter after the date that this Contract is signed, such provision shall be construed to include an obligation of the Parties to negotiate or reach an agreement in good faith within the spirit and intent of mutual cooperation and the content of this Contract.

G. Owner's Determination. The Owner shall determine the acceptability of the Work for conformance with the Contract Documents and shall decide all questions that may arise in relation to said Work. The Owner's determinations shall be final subject to the Design-Builder's right to assert a Claim under General Conditions, Article 10.

H. No Waiver. No consent or waiver, expressed or implied, by a Party to the performance by the other Party or of any breach or default by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of consent by a Party in any one instance shall not limit or waive the necessity to obtain such Party's consent in any future instance. No waiver of any rights under this Contract shall be binding unless it is in writing and signed by the Party waiving such rights.

Section 2.02 - Not Used.

Section 2.03 - Not Used.

Section 2.04 - Electronic Data Transfer.

A. Electronic data includes, but is not limited to, all digital versions of any of the Contract Documents, all digital files produced by mechanical, facsimile, electronic, magnetic, digital or other programs, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including but not limited to, word processing documents, spreadsheets, database files, charts, graphs, drawings, specifications, outlines, electronic mail, personal digital assistant messages, instant messenger messages, PDF files, PRF files, batch files, ASCII files, DWG files and any other type of files now or hereafter allowed by Owner.

B. The Owner reserves the right to implement an electronic payment program for payments due the Design-Builder. Prior to implementation, the Owner, in writing, shall notify the Design-Builder one hundred twenty (120) Days prior to the date that the electronic payment program will be implemented. Commencing on or after the date that the electronic payment program will become effective, all payments, due to the Design-Builder, shall only be rendered electronically, unless payment by paper check is authorized in writing by the Owner. Commencing on or after the electronic payment implementation date, the Design-Builder, further acknowledges and agrees that the Owner may withhold payments, if the Design-Builder has not complied with the Owner's policies and procedures relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the Owner.

C. Electronic data produced in connection with the Contract is proprietary information of the Owner and to be treated as confidential and not to be disclosed to, or shared with others outside the limits of the Contract without the express written consent of the Owner. The Owner makes no warranty, express or implied, as to the accuracy of the information transferred.

D. The Design-Builder shall pay, on behalf of the Owner, any loss which the Owner becomes legally liable to pay as a result of a claim made against the Design-Builder or Owner by any person or entity, which results directly from an act, error or omission of the Design-Builder in the provision of electronic data in respect to the Contract.

Section 2.05 - Not Used.

Section 2.06 - Notice and Service Thereof.

Unless otherwise required by the Contract Documents, any Notices, demands, or requests required to be given under this Contract after it has been awarded as a contract shall be in writing and (1) delivered personally, (2) sent by facsimile, (3) by nationally recognized express-type courier service requiring delivery receipts, or (4) postage prepaid by U.S. Mail, return receipt requested, as follows:

To Owner:

515 Broadway
Albany, New York
12207-2964
Attn: Stephen Curro

With Copy to Legal (which copy to Legal shall not constitute Notice):

Michael E. Cusack, Esq.
General Counsel
515 Broadway
Albany, New York
12207
Attn: _____

and

To Design-Builder:

Attn: _____

With Copy to:

Attn: _____

In addition to the above Notice, the Party serving such Notice (1) must submit such Notice via Owner’s Project Management Program, and (2) may also send a courtesy copy via email; provided, however, the Project Management Program and email submissions and any attachments to such submissions shall not serve as formal Notice. Changes of address or addresses for Notice shall be in compliance with this Section. Notices properly addressed and stamped shall be deemed received by the addressee on the Day of actual receipt. Express-type courier service Notices shall be deemed to have been received at the end of the first Business Day following the actual date of delivery by such courier. Any provision of this Contract that requires a Notice by either Party is not deemed by the Parties hereto to be a mere formality or technicality, but rather is essential to the relationship between the Parties and shall be adhered to strictly.

Section 2.07 - Not Used.

Section 2.08 - Invalid Provisions/Severability.

In the event that any provision of this Contract or the documents and instruments contemplated hereby is held by court of competent jurisdiction to be invalid, prohibited, or unenforceable for any reason, unless narrowed by construction, this Contract and the documents and instruments contemplated hereby shall be construed as if such invalid, prohibited, or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited, or unenforceable, or if such language cannot be drawn narrowly enough to satisfy such court, the court making any such determination shall have the power to modify in scope, duration, or otherwise any such provision, but only to the extent necessary to make such provision or provisions enforceable in such court, and such provision then shall be applicable in such modified form. No narrowed construction, court-modification, or invalidation of any provision of this Contract and the documents and instruments contemplated hereby shall affect the construction, validity, or enforceability of such provision or of this Contract and the documents and instruments contemplated hereby in any jurisdiction other than that upon which the decision of the court of competent jurisdiction shall govern. If any term or provision of the Contract Documents or the

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

Section 2.09 - Interpretation of Contract Documents.

A. Requests for Clarification. Should the Design-Builder discover any conflicts, omissions, or errors in the Contract Documents, the Design-Builder shall request in writing an interpretation or clarification, or additional detailed instructions before proceeding with the applicable Work. The written request shall be given to Owner's Authorized Representative. Owner shall, within a reasonable time, issue in writing the interpretation, clarification or additional detailed instructions requested. Should the Design-Builder proceed with the applicable Work before receipt of the interpretation, clarification, or instructions from Owner, the Design-Builder shall replace or adjust any Work not in conformance therewith and shall be solely responsible for any resultant damage or added cost.

B. Order of Interpretation. In the event of any conflict between or among the Contract Documents, the following order of interpretation shall prevail: (a) the terms of a duly authorized and executed Change Order with regard to the subject matter of the Change Order; (b) the General Requirements of the Work; (c) the Construction Documents; and (d) the General Conditions of the Work. Furthermore, the several documents forming the Contract Documents shall be taken as mutually explanatory of one another; however, Owner shall decide priority where there exist ambiguities, discrepancies, conflicts, or inconsistencies between or among respective Contract Documents of equal precedence.

C. Precedence of Representations. Figured dimensions shall take precedence over scaled dimensions. Larger scale drawings shall take precedence over smaller scale drawings. Latest addenda shall take precedence over previous addenda and earlier dated drawings and specifications. All materials or labor for Work which is shown on the Drawings or described in the Technical Specifications or is reasonably inferable therefrom as being necessary to produce a finished Project shall be provided by Design-Builder or its Subcontractors.

D. Better Quality Provision. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity of material or more onerous provision in the Owner's judgment shall govern, regardless of cost, unless the Owner directs otherwise in writing. Where compliance with two or more requirements is indicated in any of the Contract Documents and where these requirements conflict in quantity or quality, Design-Builder shall comply with the most stringent requirements unless specifically indicated otherwise in the Contract Documents. In each conflict, the Owner shall determine whether the quality, quantity or onerous provision method will be used to resolve the conflict. In addition, where provisions in two or more of the Contract Documents are complementary, the more detailed provision shall control over the more general provision. It is the intent of the Contract Documents that they shall be construed to require a high quality of constructed work and include all items necessary to produce the results intended by the Contract Documents.

E. Technical Specifications. Generally, the Technical Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and locations of installation of the various Materials and equipment required for the Work. It is not intended that the Technical Specifications will mention every item of Work which can be adequately shown on the Drawings nor is it intended that the Drawings show all items of Work described or required by the Technical Specifications. Drawings and Technical Specifications are complementary. Anything shown on the Drawings and not mentioned in the Technical Specifications, or mentioned in the Technical Specifications and not shown on the Drawings, shall have the same effect as if shown or mentioned in both.

ARTICLE 3 - SITE CONDITIONS

Section 3.01 - Underground Facilities.

A. Design-Builder Responsibility. To the extent information on such installations has been made available to or discovered by Owner in the performance of the design work, existing underground installations within the construction limits of the Work are indicated on the (i) original Subsoil Investigation Recommendation – July 1954, (ii) original foundation drawings – Buildings 1 and 2, (iii) miscellaneous original Site plans – Buildings 1 and 2, and (iv) CHA Site Evaluation Report Harriman Campus - May 2018 attached hereto as Exhibit EE. The accuracy and completeness of this

information is unknown and is presented solely to assist Design-Builder in determination of Underground Facilities. Design-Builder shall conduct Work operations on the basis that Underground Facilities may exist that are not indicated on the provided drawings. Design-Builder shall comply with all Laws applicable to underground and subsurface operations. Design-Builder shall be responsible for locating and identifying all existing Underground Facilities where any penetration such as, but not limited to, excavation, plowing, trenching, driving of well points, or insertion of any tool or device below the surface is anticipated or required or where construction operations may subject Underground Facilities to damage prior to the performance of such Work. Surveying shall include contacting owners of Underground Facilities. Locator services and detection devices provided by the utility owners shall be utilized when such are available. Design-Builder shall hand excavate and positively identify all Underground Facilities.

B. Repair and Restoration by Design-Builder. Design-Builder shall be held responsible for any damage to and interruption in the service of Underground Facilities resulting from Design-Builder's negligence in its operations. Except where the damaged parties desire to conduct their own repair and restoration work, Design-Builder shall repair and restore any Underground Facility damaged by Design-Builder's negligence during the construction period to a condition equal to that which existed just prior to the time of damage. All repair and restoration work shall be done to the reasonable satisfaction of Owner. Where the Underground Facility owners desire to conduct their own repair and restoration work, Design-Builder shall render all assistance to facilitate this corrective work and shall be responsible for reasonable direct costs thus incurred by the Underground Facility owners resulting from Design-Builder's negligence.

C. Inspections. Design-Builder shall make its own arrangements with any Governmental Agency requiring inspection of repaired or reconditioned utility facilities. All inspection fees applicable shall be paid by Design-Builder.

D. Owner Disclaimer. Responsibility for the accuracy and completeness of any and all Owner-supplied drawings is expressly disclaimed by Owner.

E. Maintaining Records of Underground Facilities. All information relative to the Underground Facilities shall be recorded by the Design-Builder and incorporated into the records required by this Contract.

Section 3.02 - Subsurface or Site Conditions Found Different.

A. Site Conditions. The Design-Builder acknowledges that the Contract Documents, including the Technical Specifications, Preliminary Cost Estimate, GMP (when it is finalized pursuant to Contract, Section 2.1.6), Project Schedule, and the Milestone Dates include such provisions that the Design-Builder deems sufficient for all subsurface or site conditions the Design-Builder could reasonably anticipate encountering as indicated in the Contract Documents, or borings, reports, rock cores, foundation investigation reports, topographical maps, Site survey, or other information available to the Design-Builder or from the Design-Builder's inspection and examination of the Site prior to the Execution Date.

B. Owner-Provided Information. Owner assumes no responsibility for any conclusions or interpretations made by Design-Builder on the basis of the information made available by Owner, other than information contained in or referenced in this Contract. Owner assumes no responsibility for, and the Design-Builder is not entitled to rely on, the correctness of any boring or other subsurface information provided by Owner, and Owner makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation, Site surveys, and topographical maps which may be made available to the Design-Builder. Design-Builder further acknowledges that any failure by Design-Builder to reasonably acquaint itself with the information provided by Owner or through Design-Builder's reviews and inspections, including conducting its own geotechnical investigations and soil borings, shall not relieve Design-Builder from responsibility for having estimated properly the duration, difficulty, or cost of successfully completing the Work. While Owner has provided, attached hereto as Exhibit EE, the (i) original Subsoil Investigation Recommendation – July 1954, (ii) original foundation drawings – Buildings 1 and 2, (iii) miscellaneous original Site plans – Buildings 1 and 2, and (iv) CHA Site Evaluation Report Harriman Campus - May 2018 documents for Design-Builder to consider as part of its Work, Design-Builder has no right to rely on the information contained in those documents for any purpose and Design-Builder cannot assert a Claim based on the information in such documents being insufficient. To the extent the Design-Builder chooses to rely on the Owner-provided information, Design-Builder is proceeding at its own risk, and Owner will not be responsible and Design-Builder assumes all risk for any additional costs or schedule changes related to its use of this information.

C. Discovery of Materially Differing Conditions. Should the Design-Builder encounter subsurface or site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Design-Builder shall, as early as practicable, but not more than three (3) Days after the discovery of such conditions, give Notice to the Owner of such conditions, and Design-Builder shall not disturb said conditions until authorized to do so by the Owner.

D. Material Difference Determined by Owner. Subsurface or site conditions found materially differing from those that could have been reasonably anticipated may be cause for change pursuant to General Conditions, Article 7. This determination will be made by the Owner.

E. General Working Conditions. Design-Builder acknowledges that it has made a reasonable investigation and reasonably satisfied itself as to the conditions affecting the Work, including, but not limited to, those bearing upon the transportation, disposal, handling, and storage of Materials; availability of labor, water, electric power, and roads; soils compaction and composition, the reasonably anticipated uncertainties of weather, river stages, lake stages/levels, tides, surface or subsurface materials or similar physical conditions at the Site, the conformation and condition of the ground; and the character of Construction Equipment and Construction Aids needed preliminary to and during the prosecution of the Work. Design-Builder acknowledges that it has developed and reviewed the information contained in the Contract Documents, including Contract, Exhibit C, to account for all Site conditions.

F. Process. In the performance of this Contract, Design-Builder shall comply with all applicable Hazardous Material Laws. Design-Builder shall provide Material Safety Data Sheets for any hazardous chemicals brought on Site by Design-Builder. Copies of the Material Safety Data Sheet shall include the Contract number, shipping location, and shall be sent to the shipping location identified in this Contract at least ten (10) Business Days prior to the delivery of such materials to the Site. In addition, Design-Builder shall provide the necessary information in training to its employees on each hazardous chemical to which they may be exposed to on the Site. Design-Builder shall identify to Owner in advance the quantities of all “**Chemicals of Interest**” listed under the Chemical Facility Anti-Terrorism Standards of the Homeland Security Appropriations Act of 2007 that will be brought onto the Site.

G. Disposal of Excavated Material; Archeological or Historical Finds.

1. On-Site Disposal. No waste material generated by the Design-Builder or its Subcontractors as a result of the Work may be disposed of on Site.
2. Archeological or Historical Finds. In the event that any relics or items with archeological or historical value or other valuable materials (“**Relics**”) are discovered on the Premises by Design-Builder or any Subcontractor, Design-Builder shall immediately notify Owner’s Representative and appropriate authorities in accordance with applicable Laws, and await the decision of Owner’s Representative before proceeding with any further Work that might harm or destroy such Relics. Neither Design-Builder nor any Subcontractor shall have any property rights to such Relics.

Section 3.03 - Verifying Dimensions and Conditions.

A. Familiarization. Design-Builder has familiarized itself with the Contract Documents, including the Scope of Work, Basis of Design, layout and design requirements, conceptual design objectives, and with pertinent Project dates and programming needs, including the Project Schedule.

B. Lines and Grades. Design-Builder shall supply and designate the survey monuments used by the Design-Builder to establish basic horizontal and vertical control points for the Work as shown on drawings contained in the Technical Specifications. Design-Builder will be responsible for providing suitable equipment and competent workmen to locate and layout the Work. Design-Builder shall provide reasonable advance notice to the Owner to verify horizontal and vertical control points. Design-Builder shall be responsible for any additional costs or delays caused by the removal and replacement of Work that has been improperly located by Design-Builder.

C. Verification of Dimensions. The Design-Builder shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. If said dimensions or conditions are found to be in

conflict with the Contract Documents, the Design-Builder immediately shall refer said conflict to the Owner in writing. The Design-Builder shall comply with any revised Contract Documents.

D. Fabrication Measurements. During the performance of the Work, the Design-Builder shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.

E. Location of Work. The Design-Builder shall review all Contract Documents to determine exact location of all Work and verify spatial relationships of all the Work. Any question concerning said location or spatial relationships shall be submitted in a manner approved by the Owner.

F. Coordination. Design-Builder shall coordinate special locations for equipment, pipelines, ductwork and other such items of the Work, where not dimensioned on plans, with Design-Builder's Subcontractors and Owner's Separate Contractors.

G. Proper Fitting. The Design-Builder shall be responsible for the proper fitting of the Work in place.

Section 3.04 - Surveys.

Unless otherwise expressly provided in the Contract Documents, the Owner shall furnish the Design-Builder all surveys, geological and subsurface data, and reports in its possession with respect to the Site, but the Design-Builder shall lay out the Work.

ARTICLE 4 - DESIGN-BUILDER

Section 4.01 - Design-Builder's Responsibilities.

Design-Builder shall: (i) commence and complete the design, procurement, construction, start-up, and commissioning of the Work for the Project as set forth in, or reasonably inferable from, the Contract Documents; (ii) diligently execute the Work in accordance with the Project Schedule; and (iii) complete all Work in accordance with the Contract Documents on or before the Milestone Dates and for the GMP as set forth in the Project Schedule and Contract Documents. Unless otherwise provided in the Contract Documents, the Design-Builder shall choose its Means and Methods subject to the Owner's right to reject, at any time, the Means and Methods proposed by the Design-Builder, which in the opinion of the Owner: (i) will constitute or create a hazard to the Work or to persons or property; (ii) will not produce finished Work in accordance with the terms of the Contract Documents; (iii) will be detrimental to the overall progress of the Project; or (iv) will have an adverse impact on the operations of the Client. The Owner's failure to exercise its right to reject the Design-Builder's Means and Methods shall not relieve the Design-Builder of its obligation to complete the Work; the Owner's exercise of its right to reject the Design-Builder's Means and Methods shall not create a Design-Builder's or Subcontractor's cause of action for damages against the Owner.

Section 4.02 - Adequate and Competent Labor Force.

At all times during the performance of the Work, Design-Builder shall keep, and cause to be kept, at the Site a sufficient number of skilled workers, laborers, and other Personnel necessary to perform and complete each part and portion of the Work on Schedule. Following consultation with Design-Builder, Owner has the right to disapprove and demand the removal of any craft or managerial Personnel provided by Design-Builder or its Subcontractors, and Design-Builder shall then promptly cause such Personnel to be removed. Design-Builder's failure to maintain an adequate or competent labor force shall constitute a material breach by Design-Builder under this Contract.

Section 4.03 - Approval of Design-Builder Personnel.

Following consultation with Design-Builder, Owner has the right to deny access to, or expel from the Premises any Personnel provided by Design-Builder or its Subcontractors, and Design-Builder shall then promptly cause such Personnel to be removed from the Premises. Design-Builder may bring former employees of Owner (or Owner's Affiliates) onto the Premises only if it obtains written prior approval from the Owner. Should Design-Builder learn that one of its Personnel is a

former employee of Owner or its Affiliates after such employee has been admitted to the Premises, Design-Builder shall immediately notify Owner. Owner shall have the right and power to then exclude such employee from the Premises.

Section 4.04 - Project Representatives.

A. Design-Builder's Representative. Unless otherwise agreed in writing by Owner, Design-Builder shall appoint its Project Manager as Design-Builder's Representative and is the individual identified in General Conditions, Section 2.06. The Design-Builder's Representative shall be a resident of the Site throughout the Work and available for consultation with Owner, Owner's Representative, Owner's Technical Advisor, and Other Owner Authorized Parties, if any, at all reasonable times. The Design-Builder's Representative shall be authorized to act on behalf of Design-Builder, and his or her instructions, requests, and decisions shall be binding upon Design-Builder as to all matters pertaining to this Contract and the performance of the Work, inclusive of executing Change Orders in accordance with General Conditions, Article 7, on Design-Builder's behalf. The Design-Builder's Representative shall be able to read, write, and speak English fluently, as well as communicate with the Design-Builder's workers and the workers of all Subcontractors. Design-Builder shall not change Design-Builder's Representative without the prior written consent of Owner. If Owner is dissatisfied with the performance of Design-Builder's Representative, and at no cost to Owner, Owner may direct that Design-Builder remove such person from the position of Design-Builder's Representative.

B. Site Construction Manager. At all times, the Work to be performed by Design-Builder at the Site shall be managed by a competent site construction manager experienced in the procurement and construction of projects similar to the Work. The site construction manager's duties shall include, among other things, coordination of Work between all entities performing Work on the Site on behalf of Design-Builder, including Design-Builder's Subcontractors.

C. Other Key Personnel. Concurrently with the appointment of Design-Builder's Representative, Design-Builder shall provide Owner with a list of all Key Personnel and their respective resumes which Design-Builder intends to use in the performance of the Work. A preliminary list of Key Personnel of Design-Builder is set forth in Exhibit G. Design-Builder shall not replace any such personnel at any time without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Design-Builder shall promptly replace any Key Personnel to which Owner reasonably objects in writing.

D. Owner's Representative. Owner shall appoint an Owner's Representative who shall be authorized to act on behalf of Owner and with whom Design-Builder may consult at all reasonable times, and whose instructions, requests and decisions will be binding upon Owner as to all matters pertaining to the Contract Documents and the performance of Owner. Unless otherwise stated in writing by Owner, Owner's Representative does not have authority to execute Change Orders in accordance with General Conditions, Article 7 and Owner's Change Order approval process. Unless otherwise designated by Owner, the initial Owner's Representative is the Owner's project manager as identified in Section 2.06. Owner may change the identity of its Owner's Representative and the scope of their respective duties by providing Notice to Design-Builder pursuant to the provisions of General Conditions, Section 2.06. The Owner's Representative and Design-Builder's Representative shall confer before the Work begins to ensure that the nature and scheduling of the Work's activities are mutually understood and shall meet multiple times weekly during the Work's duration to discuss the progress made, impediments encountered or expected and their resolution, and all other relevant matters. In addition, Owner may, from time to time, appoint, in writing, other individuals as an "**Other Owner Authorized Party**," whose duties, authority, and responsibilities shall be specified in the Notice provided to Design-Builder of such Other Owner Authorized Party's appointment.

E. Owner Representative's Access. Owner, Owner's Representatives, Owner's Technical Advisor, and any Other Owner Authorized Party, and their respective agents, employees, and invitees, shall have the rights typically associated with an owner of real property and shall at all reasonable times have access to the Work wherever and whenever it is in preparation and progress, provided said access shall not unduly interfere with the Work. Without limiting the generality of the foregoing, Owner, Owner's Representatives, Owner's Technical Advisor, and any Other Owner Authorized Party shall have the right to videotape, photograph, copy, or otherwise record the activities and the Work. The presence of Owner, Owner's Representatives, Owner's Technical Advisor, any Other Owner Authorized Party, and any of Owner's Separate Contractors shall not relieve Design-Builder of the responsibility for construction Means and Methods, techniques, sequences or procedures, QA/QC, or for safety precautions and programs in connection with the Work, and Owner, Owner's Representatives, Owner's Technical Advisor, any Other Owner Authorized Party, or any of Owner's Separate Contractors will not be responsible for the acts and omissions of Design-Builder or its Subcontractors related to any portion of the Work.

F. Cooperation and Compliance with Owner's Representative's Directives. The performance of the Work is the responsibility of Design-Builder. The Design-Builder shall issue all appropriate orders to Design-Builder's employees and Subcontractors. Design-Builder will closely cooperate with Owner, Owner's Representative, Owner's Technical Advisor, Other Owner Authorized Parties, and Owner's Separate Contractors to the extent consistent with the requirements for performance of the Work. Owner or Owner's Representative may direct Design-Builder to take such actions as Owner reasonably deems to be in the best interests of the Project.

Section 4.05 - Wages and Benefits.

Design-Builder shall be responsible for payment of all wages, pension or retirement obligations, housing obligations, social security, unemployment, workers' compensation, and all other social taxes or charges for its employees, and Design-Builder shall require that its Subcontractors are likewise responsible for their own employees. Design-Builder and all Subcontractors are solely responsible for the direction of their workforces; all aspects of employment regarding their employees' terms and conditions of employment including, but not limited to, all aspects of hiring, firing, evaluations, wages, as well as all decisions regarding labor relations, collective bargaining, grievances, arbitrations, and any and all other dealings with labor organizations representing Design-Builder or Subcontractor employees (collectively, "**Employment Issues**"). Design-Builder and all Subcontractors agree to indemnify Owner for any damages, and any fees and costs associated with defending any related action, in the event an employee of Design-Builder or any Subcontractor successfully brings any suit in a court of law and/or charge or other action before any municipal, state, or federal agency against Owner regarding or arising out of any Employment Issues relating to the employee's employment with Design-Builder or any Subcontractor. If Design-Builder fails to properly pay its employees or craft labor as required by the Contract Documents, including this Section or applicable Law (on this Project or any other project, where such non-payment is affecting the Work), Owner may provide Design-Builder a Notice demanding Design-Builder cure any such non-payment to any organization or entity within five (5) Business Days.

Section 4.06 - Representations and Warranties of Design-Builder.

The Design-Builder represents and warrants that:

- A.** It is financially solvent and is experienced in and competent to perform the Work, and Design-Builder has the staff, Personnel, craft labor, equipment, and Subcontractors available to complete the Work within the time specified for the GMP.
- B.** It is familiar with all federal, state, and local Laws, ordinances, orders, rules, regulations, and Prudent Industry Practice that may affect the Work. Design-Builder is the holder of all federal, state, local or other governmental consents, licenses, permits or other authorizations necessary to conduct its business now and as contemplated by this Contract and the other Contract Documents.
- C.** Any temporary and permanent Work required by the Contract Documents can be satisfactorily constructed, and that said construction will not injure any person or damage any property.
- D.** It has carefully examined the Contract Documents and the Site, and, from the Design-Builder's own investigations, it is satisfied as to the nature and materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or items which may affect the Work. Design-Builder and its Subcontractors have taken steps necessary in accordance with the Contract Documents and Prudent Industry Practice to ascertain the nature and location of the Work, and they have investigated and satisfied themselves as to the general and local conditions which may affect the Project, the performance of the Work, and the use of the Facility including, but not limited to, the following: (i) conditions bearing upon transportation, disposal, handling and storage of construction equipment and materials; (ii) the availability and cost of labor and materials; (iii) uncertainties of weather and other generally prevailing climate conditions; (iv) the formation and surface conditions of the ground and other observable physical conditions at the Site; (v) subsurface conditions; (vi) available surveys, including the location of all existing buildings, utilities, conditions, streets, construction equipment, components and other attributes having or likely to have an impact on the Project; (vii) the character of construction equipment, materials, and facilities needed prior to and during the performance of the Work; (viii) location, condition, layout and nature of the Site as set forth in the Contract Documents; and (ix) all available Project geotechnical, hazardous materials, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations. Design-Builder represents that it has no knowledge of

any condition, concealed or otherwise, which would hinder or prevent execution of the Work in accordance with the Contract Documents.

E. It has familiarized itself with the Owner's Basis of Design documents, specifications, layout and design requirements, conceptual design objectives, and with pertinent Project dates and programming needs, including the Project Schedule. Design-Builder has reviewed all information provided by Owner and reasonably ascertainable through Design-Builder's site inspection to develop its understanding of the Project. It is satisfied that the Work can be performed and completed as required in the Contract Documents, and warrants that it has not been influenced by any oral statement or promise of the Owner or the Owner's Technical Advisor.

F. It will comply with all Laws, Prudent Industry Practice, and all applicable design and construction standards and accrediting agencies and organizations.

G. To the best of Design-Builder's knowledge, there are no pending or threatened suits, proceedings, judgments, rulings, or orders by or before any court or any governmental agency or arbitrator that could reasonably be expected to materially and adversely affect: (i) the financial condition or operations of Design-Builder; (ii) the ability of Design-Builder to perform its obligations hereunder; or (iii) the legality, validity, or enforceability of this Contract.

H. It is a duly organized and validly existing entity of the type described in the recital clauses of this Contract and is in good standing under the Laws of the jurisdiction of its formation; it has the legal right, power, and authority and is qualified to conduct its business, and to execute and deliver this Contract and perform its obligations under this Contract; and all regulatory authorizations have been or will be obtained and will be maintained, as necessary, for it to perform legally its obligations under this Contract as such obligations become due.

I. Executing and performing this Contract are within its powers; that it has been duly authorized by all necessary action on its part; and that such actions do not and will not violate any provision of Law or any rule, regulation, order, writ, judgment, decree, or other determination presently in effect applicable to it or its governing documents.

J. This Contract constitutes its legal, valid, and binding act and obligation, enforceable against it in accordance with this Contract's terms, subject to applicable bankruptcy, insolvency, reorganization, and other Laws affecting creditors' rights generally, and general equitable principles, to the discretion of the court before which proceedings to obtain same may be pending.

K. Design-Builder is in good standing with any organization, entity, or union with craft labor on the Project, including for work performed on this Project or any other project (including all projects for other owners).

L. Design-Builder is experienced in the methods of design, engineering, procurement, installation, management, and construction contemplated for Design-Builder's Work on this Project and other major projects of this nature, scope, magnitude, and quality. Design-Builder understands the complexity involved in this type of construction and the necessity of coordination of its Work with appropriate Governmental Agencies and Owner and Owner's Separate Contractors.

M. Design-Builder is fully informed as to all existing conditions and limitations, including local craft labor working arrangements and Laws affecting Design-Builder, the Work, or the Project.

N. Design-Builder has provided, or will provide its Subcontractors a copy of the applicable provisions of the Contract pursuant to General Conditions, Section 6.04.

O. Design-Builder agrees and acknowledges that as a result of the above representations and warranties, claims for increases to the GMP, or Milestone Dates resulting from Design-Builder's failure to familiarize itself with the Site, the Project, or the Contract Documents shall be deemed waived and any plea of ignorance by Design-Builder regarding existing or foreseeable conditions or conditions at the Site that are reasonably inferred from the Contract Documents which create difficulties or hindrances in the execution of the Work will not excuse Design-Builder from fulfilling all requirements of the Contract, nor shall it be the basis for any claim for an increase to the GMP or the Milestone Dates.

P. Covenants of Design-Builder. Design-Builder warrants and represents to Owner that during the term of this Contract it shall:

1. Comply at all times with applicable Laws necessary for its performance under this Contract, or, in the event of any alleged continuing noncompliance, diligently contest any allegations of non-compliance with such Law in good faith by appropriate proceeding to the extent permitted without material adverse effect on Design-Builder's performance under this Contract; and
2. Give all required Notices, procure, maintain, and comply with all applicable Permits necessary for the performance of its obligations under this Contract, and pay all charges and fees in connection therewith.

Section 4.07 - Standards of Performance.

A. Skill and Judgment. Design-Builder covenants with the Owner to furnish Design-Builder's best skill and judgment and to consult and cooperate with the Owner, the Owner's Technical Advisor, Other Owner Authorized Parties, and Owner's Separate Contractors. Design-Builder shall furnish efficient business administration and superintendence to complete the Project in an expeditious and cost-effective manner consistent with the interests of the Owner. Design-Builder acknowledges that the Project's Basis of Design included in the RFP and attached hereto as Exhibit O (the "**Basis of Design**") was issued for Design-Builder's information and use for Design-Builder to design and develop the Drawings and Technical Specifications for Owner's review and approval and to construct the Project based on the Contract Documents, including the approved Design-Builder's Drawings and Technical Specifications and Prudent Industry Practice.

B. Expertise. Design-Builder represents and warrants to Owner that it is experienced in the type of design, procurement, construction, commissioning, and start-up represented by this Project. Design-Builder understands the complexity involved in this type of Project and the necessity of coordination of its services with Governmental Agencies and the community within which the Project will be constructed.

C. Design-Builder's Professional Services. The Design-Builder shall provide professional services that constitute the practice of architecture and engineering, including those design services needed to carry out the Design-Builder's responsibilities for construction means, methods, techniques, sequences, and procedures. The Design-Builder shall cause such design services or certifications to be provided by a properly licensed Design Professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other Submittals prepared by such Design Professional. Shop Drawings and other Submittals related to the Work designed or certified by Design-Builder's Design Professional, if prepared by others, shall bear such Design Professional's written approval when submitted to the Owner or Owner's Technical Advisor. The Owner and Owner's Technical Advisor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications and approvals performed or provided by Design-Builder's Design Professionals, provided the Owner's Technical Advisor shall specify to the Design-Builder all performance and design criteria that such services must satisfy. Design-Builder shall not replace Design-Builder's Design Professional at any time without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed.

Section 4.08 - Design-Builder Reviews.

A. Design-Builder Review of Contract Documents. Design-Builder shall review the Contract Documents: (i) for compliance with Laws; (ii) to establish construction Means and Methods, techniques, sequences, or procedures; (iii) to establish safety precautions and programs in connection with the Work; (iv) to establish QA/QC parameters for the Work; and (v) to obtain all Permits or other approvals from Governmental Agencies required to perform the Work.

B. Site Review. By execution of this Contract, Design-Builder represents that Design-Builder has visited the Site and become familiar with local and all special conditions under which the Work is to be performed. Design-Builder shall carefully examine the Drawings, Technical Specifications, and Site documents identified in Exhibit C and Exhibit EE to ensure that those Drawings, Technical Specifications, and Site documents are sufficient in content and detail to complete the Work in accordance with the Contract Documents and to enable Design-Builder to deliver, within the GMP and Project Schedule, the Project, fully completed with all appurtenant improvements as shown or specified in or reasonably inferable from the Contract Documents without the need for any change to the GMP and Project Schedule. Other than as expressly

provided in this Contract, Design-Builder shall not be entitled to extra or additional compensation for performance of Work to deliver the Project as contemplated by the Contract Documents.

C. Adjacent Land and Structures. By execution of the Contract, Design-Builder represents and warrants that it has examined all land adjoining and surrounding the Site (including, for the purposes hereof, streets and sidewalks, and buildings adjoining the Site) and has ascertained the materials and construction of the structures and all existing conditions of such premises and the structures thereon, and Design-Builder shall be governed thereby for the necessary, thorough, safe and satisfactory execution of all Work called for herein, whether indicated by Drawings or Technical Specifications, or not, and all work and protective measures necessary to keep and leave the said premises and structures in the same condition as they were before commencing work shall be undertaken by Design-Builder without any addition to the GMP. Wherever Design-Builder should reasonably foresee that any parts of adjoining premises will interfere with or will be interfered with by the Work to be performed hereunder, Design-Builder shall stop Work in that area and notify Owner immediately. Design-Builder will submit to Owner its intended actions to resolve same for information prior to undertaking the Work. Design-Builder shall not interfere with or otherwise impair the ability of Owner, adjoining property owners or tenants, or the public to use any buildings in the vicinity of the Site.

Section 4.09 - Errors or Discrepancies.

Design-Builder represents and warrants that it has thoroughly examined the Contract Documents, including the Basis of Design, before commencing the Work and that it has reported any errors or discrepancies to the Owner, in writing, prior to the Effective Date.

Section 4.10 - Coordinated Composite Drawings.

In conjunction with Building Information Modeling (“BIM”) the Design-Builder shall prepare coordinated composite drawings clearly showing how the Work of the Design-Builder is to be performed which shall include, where appropriate for the conduct of the Work, work performed by Owner’s Separate Contractors, prepare scaled drawings and sections in the same digital software program, version and operating system as the original contract drawings or in an operating system approved by the Owner.

Section 4.11 - Meetings.

The Design-Builder, including its Personnel appropriate for attending the applicable meeting, shall attend all meetings required by the Contract Documents, including all meetings as directed by the Owner.

Section 4.12 - Design-Builder Supervision and Technical Expertise.

Design-Builder shall furnish adequate full-time management, supervisory, and technical personnel on the Site to ensure expeditious and competent handling of the Work. Design-Builder shall not employ or permit any Subcontractor to employ in connection with its performance under this Contract any unfit Person or anyone not skilled in the work assigned to such Person. Design-Builder shall have and exercise full responsibility for compliance hereunder by Design-Builder’s employees and Subcontractors generally, and in particular, with respect to Design-Builder’s portion of the Work; shall itself comply with all Laws, and require and be directly responsible for compliance therewith on the part of Design-Builder’s employees and Subcontractors; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines, or penalties which may be incurred by reason of Design-Builder’s failure or Design-Builder’s employees’ or Subcontractors’ failure to so comply.

A. Staff.

1. Design-Builder shall provide a staffing plan and shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of the Work, organize the procurement of all Materials and equipment so that they will be available at the time they are needed for the Work, and keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

2. Design-Builder shall provide qualified staff who shall, among other things, be responsible for coordinating the Shop Drawings and details for various Subcontractors performing the Work, check for completeness of the Shop Drawings, direct any changes as may be required for compliance with the Contract Documents, and review of Shop Drawings, as indicated by Design-Builder's drawing review stamp in accordance with the Contract Documents.

B. Supervision.

1. Design-Builder shall provide a supervision plan and shall be responsible to Owner for acts and omissions of Design-Builder's employees, Subcontractors and their agents and employees, and any other Persons performing any of the Work at the direction or under a contract with Design-Builder or its Subcontractors.
2. Neither Owner's Technical Advisor nor Owner shall participate, in any way, in the administration or supervision of the Work. The Means and Methods, techniques, sequences, procedures and safety measures utilized in the performance of the Work are the sole responsibility of Design-Builder. Any Means and Methods, techniques, sequences or procedures set forth in the Contract Documents are solely to specify the desired end product; and if the Means and Methods, techniques, sequences or procedures will not result in the desired end product or are unsafe or illegal because of some inherent defect in the particular conditions under which the Work is being performed, it is Design-Builder's responsibility to select a correct Means and Methods, techniques, sequences or procedures. Nothing in Owner's or Owner's Technical Advisor's review of the general quality and progress of the Work, shall be construed as the assumption of authority or supervision over the performance of the Work. Notwithstanding the foregoing, Owner, Owner's Technical Advisor, Owner's Representative, and any Other Owner Authorized Party, shall have the right to attend and participate in all meetings.

C. Owner Corrections. If, after written notice to Design-Builder and Design-Builder's failure to take prompt corrective action within three (3) Business Days, Owner continues to suffer or incur any additional administrative or managerial expense or liabilities as a consequence of the failure of Design-Builder to comply with the provisions of General Conditions, Subsections 4.12 (A) "**Staff**" or 4.12 (B) "**Supervision**," Owner shall perform or cause to be performed such actions, and Design-Builder shall bear all costs and expenses as such is incurred by Owner, including Owner's Administrative Fee, and shall either immediately reimburse Owner for any such costs, expenses or liabilities or Owner may deduct the amount thereof against any payments which are due to Design-Builder under the Contract Documents.

Section 4.13 - Project Scheduling.

A. Design-Builder's Responsibility. Design-Builder shall employ experienced personnel and provide appropriate support to plan, develop, provide, and properly maintain schedules, progress reports, cost reporting and forecasting functions, and invoicing in accordance with requirements of the Contract Documents. The Design-Builder shall provide a dedicated scheduler for the Project, experienced in critical path method (CPM) scheduling. The scheduler's experience and credentials shall be submitted to the Owner for review and acceptance prior to proceeding with scheduling of the Work.

B. Using the Schedule Software required by the Owner, the Design-Builder shall prepare, maintain, and revise the Project Schedule to monitor the progress of all Project operations, in accordance with the Contract Documents. All Project activities shall be interrelated on a single schedule that represents the entire Contract duration from Notice to Proceed to Substantial Completion to Contract Closeout. The Design-Builder shall utilize the CPM schedule of network calculation to generate the Project Schedule. The Design-Builder shall assure all logic constraints are identified between the Work of the Contract and the work of Owner and Owner's Separate Contractors' work prior to approval of the Project Schedule.

C. Schedule Host.

1. Unless otherwise noted, the Project Schedule network and Schedule Software shall reside on a Design-Builder-provided hosting site, and Design-Builder shall be designated as the host (the "**Host**"). The Host will be responsible for software purchases, upgrades, and server hardware, normal maintenance, and access security. Design-Builder will provide Owner with access to Design-Builder-supplied software, a web based access portal.

2. Parties needing access to the Project Schedule network and Scheduling Software shall be responsible for all infrastructure required by such parties to gain access the Host's intranet and servers. Owner and all designated parties having responsibility to maintain and report schedule progress shall be afforded access to their area of responsibility in the Project Schedule by the Host. The Host shall maintain overall access control over the Project Schedule by assigning appropriate profiles to all appropriate personnel associated with the Project.

D. Schedule Software and Access. Design-Builder will submit an updated electronic version of the schedule onto the Owner's Project Management Program system on a monthly basis. For all schedule submissions by Design-Builder, including drafts of the Project Schedule and Monthly Updates, Design-Builder must provide to Owner read and copy access, including a .pdf version and an .xer version, to the Project Schedule file, along with access at Owner's reasonable request to the underlying data, calculations, assumptions, procedures, analysis, spreadsheets, databases, etc., used in their development. Unless approved by Design-Builder, Owner shall not be permitted to make changes to Design-Builder's "live" schedule network.

E. Review comments made by the Owner on the Project Schedule shall not relieve the Design-Builder from compliance with requirements of the Contract Documents. The Design-Builder shall be responsible for scheduling, sequencing, and performing the Work to comply with the requirements of the Contract Documents, including meeting all of the Milestone Dates. The Owner's review comments are offered as a courtesy and are not conditions of Owner acceptance but are for the general conformance with scheduling requirements and industry scheduling concepts.

F. The Design-Builder expressly understands and agrees that no additional compensation shall be paid for any alterations to planned construction sequences to accommodate such revisions. Failure to include any element of work required for the performance of the Work shall not excuse the Design-Builder from completing all the Work required on or before the applicable Milestone Dates regardless of the Owner's approval of the precedence diagram.

G. The Owner may withhold Applications for Payment if, at any time, the Design-Builder fails to provide an acceptable project scheduler, network analysis, schedules or revisions thereto in accordance with requirements of project scheduling portions of the Contract Documents.

Cost Engineer. Design-Builder shall provide the services of a dedicated cost estimator ("Cost Engineer") that is assigned to the Work on a full-time basis. Design-Builder's Cost Engineer will be required to track and report costs to Owner based upon the completion of discrete events or tasks contained in the Project Schedule. The Cost Engineer will report all findings and conclusions to Owner on a monthly basis, or more frequently as determined by Owner. The Cost Engineer will be responsible for utilizing the Design-Builder's internal cost engineering or estimating and accounting/reporting systems to accurately report to Owner the forecasted costs, commitments and quantities, cash flow, productivity analysis, accrual report, and progress of the Work, including an estimate to complete and an estimate at completion. The Cost Engineer shall prepare for each Monthly Report a monthly forecast to reflect actual costs anticipated to Owner for the Work so that Owner can monitor budget variances and impacts of such variances on the Project.

Section 4.14 - Owner Rules and Regulations.

Design-Builder and its Subcontractors shall abide by any and all rules Owner may have in effect at the Site where the Work is to be performed. Design-Builder shall follow all local, state, and federal labor Laws. Owner will not tolerate any type of harassment on its Premises. If Design-Builder or any of its employees or Subcontractors finds any inappropriate items or is made aware of any incident of harassment or other discriminatory behavior, Design-Builder shall notify Owner in writing within twenty-four (24) hours of such awareness and resolve the issue within twenty-four (24) hours of such awareness.

Section 4.15 - Worker Identification and Site Access Control.

A. Site Availability. Design-Builder understands that the Site will have specific access points and available space. Owner and Design-Builder have agreed on the areas Owner will make available for large mobile crane operations, Design-Builder's office and warehouse, Materials receiving and laydown, craft change rooms, welding facilities, Materials storage, and employee parking.

B. Site Access Requirements. All employees of the Design-Builder and every Subcontractor must comply with all site access control and security procedures prescribed by the Owner which may include, but are not limited to, the wearing of Owner issued identification badges, ingress and egress through controlled entry and exit points, and use of card readers or other electronic identity verification devices.

C. Employee Identification. All employees of the Design-Builder and every Subcontractor, prior to entering the Site for the first time, must obtain an identification badge if issued by the Owner and produce to the Owner a valid form of government-issued photo identification and furnish other background information including, but not limited to, the following:

- Full Name
- Last four (4) digits of Social Security Number
- Home Address (#/Street/Apt./City/Zip)
- Design-Builder/Subcontractor Name
- Job Classification
- Union Local Affiliation, if any

The Owner recognizes that certain information requested above constitutes personal information and will take all reasonable steps to ensure the security and confidentiality of this information as permitted by Law.

D. Identification Badges. All employees of the Design-Builder and every Subcontractor must visibly display on their person, while entering and on the Site, an identification badge if issued by the Design-Builder. In the event said identification badge has not been issued by the Design-Builder, all employees of the Design-Builder and every Subcontractor must produce a valid form of government-issued photo identification promptly upon request of the Owner. Failure to display such identification or to display or produce such identification in the manner as prescribed by the Owner may result in the employee's non-admittance to or immediate removal from the Site. The Owner will send written confirmation to the Design-Builder confirming the action taken, if requested by the Design-Builder.

Section 4.16 - Owner Control Over Access.

A. In addition to Owner's right to deny access to, or expel from, the Premises any employee of Design-Builder or its Subcontractors pursuant to General Conditions, Section 4.03, Owner shall also have the right to the following:

Regulation of Visitors, Photographs, and Press Releases.

1. Design-Builder shall not permit visitors on the Premises without the prior consent of Owner.
2. Design-Builder and Design-Builder's Subcontractors shall adhere to Owner's camera policy for the Project which shall be set forth in Exhibit K. Additionally, Design-Builder may not use Owner's name or photographs taken by the Design-Builder on or in the vicinity of the Premises in Design-Builder's advertising without the prior written consent of Owner.
3. The Design-Builder shall not make any verbal or written statement to any press or news media regarding the Project without obtaining prior written consent from Owner.

Section 4.17 - Related Work.

A. The Design-Builder shall examine the Contract Documents for Work of its Contract and any related work of Owner's Separate Contractors, to ascertain the relationship of its Work to any related work of Owner's Separate Contractors.

B. The services enumerated in Owner's contracts with Owner's Separate Contractors are for the benefit of the Owner who may choose to utilize any or all of said services. The Design-Builder has no privity of contract with any of Owner's Separate Contractors including, but not limited to, the Owner's Technical Advisor, Other Owner Authorized Parties, and

Owner's Commissioning Authority, that contracts with the Owner and should not assume that all of the services enumerated in said contracts will be provided.

C. The Design-Builder must review and consider all comments or communications from the Owner, Owner's Representative, or Owner's Technical Advisor in performing Design-Builder's Design Work required by the Contract Documents.

Section 4.18 - Coordination with Separate Contractors.

A. **Coordination with Other Contractors.** The Owner may award other contracts to Owner's Separate Contractors for work which may proceed simultaneously with the execution of the Work. In such event, the Owner shall provide the Design-Builder with the scope and schedule for the performance of work by the Owner's Separate Contractors. Design-Builder shall then be responsible for coordinating its Work with that of Owner's Separate Contractors working on the Premises at the same time as Design-Builder. Design-Builder shall cooperate with the Owner, Owner's Technical Advisor, Owner's Separate Contractors, or any Other Owner Authorized Party, in the scheduling and prosecution of the Work to accommodate such other work. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.

B. The Design-Builder shall keep informed of the progress and workmanship of Owner's Separate Contractors and shall notify the Owner in writing immediately of lack of progress or defective workmanship on the part of Owner's Separate Contractors, where said delay or defective workmanship may interfere with the Design-Builder's operations.

C. Failure of a Design-Builder to keep so informed and failure to give Notice of lack of progress or Defective workmanship by others shall be construed as acceptance by the Design-Builder of said progress and workmanship as being satisfactory for proper coordination with the Work.

D. Where the Design-Builder performs Work in close proximity to work of Owner's Separate Contractors, or where there is evidence that Work of the Design-Builder may interfere with work of Owner's Separate Contractors, the Design-Builder shall assist in arranging space conditions to make satisfactory adjustment for the performance of the Work. If the Design-Builder performs Work in a manner that interferes with the work of Owner's Separate Contractors, the Design-Builder shall make changes necessary to correct the condition at no additional cost to the Owner.

E. The Design-Builder shall render any assistance which the Owner may require with respect to any claim or action in any way relating to the Design-Builder's Work during or subsequent to the design or construction of the Project including, without limitation, review of claims, preparation of technical reports and participation in negotiations both before and after it has otherwise completed performance of the Contract and without any additional compensation therefor.

Section 4.19 - Cooperation with Other Contractors.

A. If the Design-Builder notifies the Owner, in writing, that an Owner's Separate Contractor on the Site is failing to coordinate the work of said Owner's Separate Contractors with the Design-Builder's Work, the Owner shall investigate the charge and if valid, the Owner shall promptly issue such directions to the applicable Owner's Separate Contractor with respect thereto as the situation may require.

B. Should the Design-Builder sustain any damage through any act or omission of any of Owner's Separate Contractors or through any act or omission of any subcontractor of any of Owner's Separate Contractors, the Design-Builder may submit a Claim in accordance with General Conditions, Article 10.

C. Should any of Owner's Separate Contractors sustain damage through any act or omission of the Design-Builder or through any act or omission of a Subcontractor, the Owner reserves the right to withhold payment from the Design-Builder or deduct the GMP by the amount of the damage and the Design-Builder shall indemnify and hold the Owner harmless from all said Claims.

Section 4.20 - Not Used.

Section 4.21 - Not Used.

Section 4.22 - Design.

A. Design-Builder's Design Work Responsibilities. Design-Builder's Design Work shall include, but not be limited to, the following:

1. the preparation of all Schematic Design Documents, Design Development Drawings and Preliminary Specifications, Construction Documents, all required approvals; master planning; planning for laboratory spaces and equipment, both fixed and moveable, interior design for fixed furniture and equipment; demolition planning and design;
2. the preparations of all Drawings, Technical Specifications, As-Built Drawings on a current basis, and estimates of product quantities sufficient to describe, detail, and construct the Project properly, including design criteria to interface the Project with utilities and with the work of other engineers and contractors, if any;
3. the preparation of detailed architectural, civil, structural, mechanical, electrical, plumbing, HVAC, lighting (interior and exterior), acoustic, instrumentation, and interior designs; fire protection, sprinkler, alarm and security design; landscape architectural design; surface parking design (including lighting and graphics); ADA evaluation and design; audio visual (A/V), communications and information technology design; related design services reasonably necessary for the Project; and Building Information Modeling ("BIM") based on the AIA G202-2013 BIM Protocol, including BIM LOD 300 for Architectural Drawings, BIM LOD 400 for Coordination Drawings and BIM LOD 500 for As-Built Drawings;
4. Owner promotes and supports design approaches and construction practices to achieve sustainable and resilient projects. Owner will facilitate integrative design practices and recognition of opportunities in every project, using all of the tools available to Owner;
5. the Design-Builder, in support of NYS initiatives for sustainability, resiliency, and energy efficiency, must establish clear sustainable initiatives for the Project, work toward those goals, produce the documentation generated by DASNY demonstrating the initiatives have been achieved, and maintain the established budget and programmatic parameters as detailed in the project description;
6. initial programming meetings for the Project shall define specific sustainable initiatives and document these initiatives in meeting notes for ongoing inclusion in project discussions, including those determining budget management and scheduling. Sustainable initiatives and references to "**sustainability**" include, but are not limited to, energy efficiency, zero net energy, renewable energy, water use reductions, greenhouse gas emissions reductions, green procurement, reduced toxins in the built environment and landscaping, green innovation, and resiliency/adaptation to climate change;
7. the Project shall include a goal of LEED Silver at a minimum and shall be fully submitted for a rating review to the GBCI (Green Business Certification Institute) using the U.S. Green Building Council (USGBC) LEED online system or the ARC platform. The Project will include:
 - a. registration for LEED at the start of the Project;
 - b. use of Design Performance Modeling (DPM) approaches to inform design for sustainability including improved relation to site specific climate;
 - c. inclusion of a Commissioning Authority (by the Owner) and a Commissioning Agent (by the Design-builder) at the beginning of the schematic design phase or earlier;

- d. inclusion of a LEED Coordinator as part of the Design-Builder team at the beginning at schematic design phase or earlier (see Section 018113 1.5 (A)); and
- e. tracking, measurement, preparation, and submission of all LEED documentation.

Note that achievement beyond LEED is encouraged and any project can make use of other guidance and rating systems in tandem with LEED, such as Living Building Challenge, Passive House Standards, WELL, Sites, and PEER to name a few. Any additional systems in use are to be described in the initial programming meetings, and referenced throughout project development. Additional systems do not necessarily eliminate the need for submission to GBCI for review under the LEED rating system.

- 8. without limiting Design-Builder's obligations to design and engineer, procure, install, value engineer, manage, construct, perform or assist with Start-Up and Commissioning, and complete the Work in accordance with the Contract Documents, and solely for the purpose of illustrating the nature of Design-Builder's obligations under the Contract Documents, Design-Builder shall, in fulfilling its design and engineering obligations hereunder, perform the detailed design and engineering as required to complete the Work in conformance with the Contract;
- 9. all plans and specifications shall be submitted to Owner for approval prior to commencement of the physical work.

B. Quality and Completeness. Design-Builder shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, Drawings, Technical Specifications, and other design professional services. Design-Builder shall be responsible for the quality, completeness, accuracy, and coordination of Construction Documents. Design-Builder shall provide design services that meet all Laws, including environmental and regulatory requirements. Design-Builder shall provide for all testing, including Performance Tests, and inspections required by Prudent Industry Practice and by Governmental Agencies having jurisdiction over the Project.

C. Design Standards of Care and Quality. Design-Builder shall perform its service relating to the Design Work in accordance with Prudent Industry Practice as defined in the Contract, and the applicable Laws, existing on the date of the Contract, and that may be enacted prior to the issuance of Project permits. If the Laws change after the Initial GMP is established or after the GMP is established as provided for in Section 2.1 of the Contract, then Design-Builder may make a claim for equitable adjustment to the GMP to address any cost or schedule impact as a result of such change. Any designs, Drawings, Technical Specifications or other Design Work prepared or furnished by Design-Builder that (i) contain errors, conflicts, or omissions; (ii) vary from the design standards of care and quality set forth above; (iii) do not meet the Owner's program requirements or the Basis of Design; or (iv) are contrary to any applicable Laws, will be promptly corrected by the Design-Builder at no cost to Owner. Owner's approval, acceptance, use of, or payment for all or any part of the Design-Builder's Design Work shall in no way alter the Design-Builder's obligations or the Owner's rights hereunder. All duties set forth in the Contract to be performed by the Design-Builder are specifically subject to the design standards of care and quality set forth in this Section.

D. Adequacy of Documents. Consistent with the standard of care required under this Contract, the Design-Builder shall prepare all Schematic Design Documents, Design Development Documents, and Construction Documents for the Project to satisfy and to achieve the Owner's program requirements and the Basis of Design, and to meet the Project Schedule, the Preliminary Cost Estimate, the Initial GMP, and the final GMP. The Design-Builder shall notify the Owner in writing, in a prompt and timely manner, and, in any event, before the development of Schematic Design Documents of any errors, omissions, deficiencies, discrepancies, inconsistencies, or missing information in the Owner's program requirements or the Basis of Design that would prevent the Schematic Design Documents, Design Development Documents or Construction Documents from being completed for their intended purposes. Said notice shall specifically describe each and every error, omission, deficiency, discrepancy, inconsistency, or missing information. The Owner shall use reasonable efforts to promptly address the issues identified by the Design-Builder. The Design-Builder shall have no claim arising out of errors, omissions, deficiencies, discrepancies, inconsistencies, or missing information in the Owner's program requirements or the Basis of Design for which notice as required by this Section has not been provided.

E. Compliance with Laws. The Design-Builder shall exercise usual, reasonable, and customary professional care in its efforts to conform all of the Design Work and all Construction Documents to all applicable Laws including, without

limitation, the Americans with Disabilities Act (the “ADA”), existing on the date such Services are provided, and which may be enacted immediately prior to the issuance of the Project permits, whichever is the latest date. The Design-Builder shall use its reasonable efforts to avoid incorporating into the Project design, elements that would give rise to code interpretation questions. The Owner recognizes such Laws and/or the interpretations by Governmental Authorities (“Code Authority”) are often subject to change even after issuance of a building permit. If, after issuance of the building permit, modifications to the Construction Documents are required because of a change in the applicable Laws or an interpretation by the Code Authority that had not been previously given or which, if given, was different than a prior interpretation of the Code Authority, the Design-Builder shall make the required modifications and may make a claim for equitable adjustment to the GMP to address any cost or schedule impact as a result of such change. Nothing herein shall relieve the Design-Builder of its obligations to modify, at its own expense, the Construction Documents and/or services where the Design-Builder has failed to prepare or perform the same in compliance with the applicable Laws and/or Code Authority in existence prior to the Design-Builder's preparation of the Construction Documents or performance of the services requiring modification. As part of the Design-Builder's Design Work, the Owner may require, and the Design-Builder shall execute, any certificates or certifications customarily, commonly, or reasonably required on projects of this type.

F. Designer of Record. Prior to the commencement of Work, Design-Builder shall designate one of the Design-Builder's Design Professional as the “**Engineer of Record**” or as the “**Architect of Record**,” as appropriate, which such entity shall be reasonably acceptable to Owner. All Construction Documents shall be sealed by a State of New York licensed Professional Engineer (P.E.), Architect, Surveyor, or licensed discipline engineer, as required to perform the Work. The Engineer of Record or Architect of Record, as the case may be, shall bear the sole responsibility for the preparation, completion, and coordination of any Construction Documents, including all Drawings and Technical Specifications required for the Work. The Design-Builder's Design Professional entities will not be replaced, nor will additional entities be added to the Design-Builder's Design Professional, without the prior written consent of the Owner. Design-Builder shall, upon the request of the Owner, submit to the Owner such documentation and information as the Owner reasonably requests to evidence the creation, standing, and ownership of the Design-Builder's Design Professional, including organizational documents and operating agreements.

G. Maintenance of Drawings and Specifications. Design-Builder shall keep one complete set of all Drawings, Technical Specifications, and Shop Drawings at the Site in good order, available to Owner and Owner's Technical Advisor. Design-Builder shall also maintain at the Site, in good order, a full set of Drawings clearly and cleanly marked to record all changes made during construction. The As-Built Drawings shall accurately record all deviations and changes from the Drawings and Technical Specifications and all deviations and changes shall be recorded within two Business Days after being made. Prior to Final Completion, Design-Builder shall furnish to Owner a set of As-Built Drawings as further described in the Contract Documents and as reasonably requested by Owner. In order for Owner to verify that the Work is proceeding in accordance with Contract Documents, the As-Built Drawings and Technical Specifications on the Site shall conform with the following:

1. Every sheet of Design-Builder's Construction Documents that differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets of the drawings and specifications.
2. As appropriate, Change Order requests shall reference applicable sketch drawings, and any supplementary drawings or Change Order requests specific drawings may be developed and included.
3. The Design-Builder shall review the As-Built Drawings with the Owner at the request of the Owner to demonstrate that the Design-Builder is fully and accurately recording all changes that have occurred.
4. Any altered drawings shall be sufficiently detailed so that future work on the Facility may be conducted with a minimum of difficulty. Before the completion of the Work, and before release of the Final Payment, the As-Built Drawings shall be revised to include all changes made and complete and current Specifications shall be transmitted to Owner.
5. Upon completion of documents, the Design-Builder and its Design Subcontractors shall certify to the Owner that all Contract Documents have been thoroughly checked for constructability, accuracy and for the coordination of all their parts and details and conformity to all applicable Laws, ordinances, and codes.

6. The Design-Builder shall coordinate all As-Built and record documents in preparation for IWMS (See Section 4.22 (R)).
7. Prior to the Owner's issuance of a Notice of Substantial Completion, the Design-Builder shall furnish to the Owner certified "**As-Built**" documents in an electronic format approved by Owner. As-Built documents of each floor shall contain the stamp of the licensed New York State design professional. Each As-Built document shall have the following statement affixed immediately adjacent to the design professional stamp:

THIS IS AN ACCURATE AS-BUILT REPRESENTATION OF PORTIONS OF THE PLANS OF THE BUILDING AS FILED WITH AND APPROVED BY THE MUNICIPAL OR OTHER GOVERNMENTAL SUBDIVISION HAVING JURISDICTION OVER THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF THE BUILDINGS.

H. Review Not Approval. No inspection or review by Owner, Owner's Technical Advisor, Owner's Representative, or Owner's Separate Contractors of any part of the Work shall constitute an approval, endorsement or confirmation by Owner of any drawing, plan, manual, specification, test, bidder, Work, program, method of procedure or other work done satisfies the requirements of the Contract Documents, or constitutes a modification to any of the requirements of the Contract Documents. No such inspection or review by Owner, Owner's Technical Advisor, Owner's Representative, or Owner's Separate Contractors relieve Design-Builder of any of its obligations to perform the Work so that the Work, when complete, satisfies all the requirements of the Contract Documents, or relieve Design-Builder from any liability or responsibility for injuries to persons or damage to property, nor shall it be deemed an approval or waiver by the Owner of any deviation from, or of the Design-Builder's failure to comply with, any provision or requirement of the Contract Documents unless such deviation or failure has been specifically identified by the Design-Builder in writing and approved by the Owner in a Modification to the Agreement.

I. Correction of Errors in the Design Work. The Design-Builder, without additional compensation, shall cause Design-Builder's Design Professional(s) or its Design Subcontractors to correct any errors or deficiencies in the Design Work. Neither Owner's review, approval or acceptance of, nor payment to the Design-Builder for any of the Design Work shall be construed as a waiver of any of Owner's rights under this Contract or of any cause of action arising out of the Design-Builder's performance or non-performance of the Design Work or the failure to comply with any provision of the Contract Documents, and Design-Builder shall be and remain liable to Owner in accordance with the Contract Documents and applicable Law for all damages to Owner to the extent caused thereby or arising therefrom.

J. Design-Builder's Schematic Design Documents, Design Development Documents, and Construction Documents. As required by the Design Phase Submission Schedule set forth in General Conditions, Section 4.22 (K) below and the Project Schedule, and based on the Basis of Design, the other Contract Documents, and all other information furnished by the Owner, upon receipt of the Notice to Proceed-Design the Design-Builder shall prepare Schematic Design Documents, Design Development Documents, and Construction Documents in accordance with Exhibit W, Owner's Design Professional Submission Requirements and cost estimates and submit them to the Owner and Owner's Technical Advisor for review and approval. The Design-Builder specifically acknowledges and agrees that (i) the Schematic Design Documents shall be consistent with, and shall develop in greater detail, the intent and scope established in the Basis of Design and other documents set forth in Exhibit O; (ii) the Design Development Documents shall be consistent with, and shall develop in greater detail, the intent and scope of the Schematic Design Documents as approved by the Owner, and (iii) the Construction Documents shall be consistent with, and shall develop in greater detail, the intent and scope of the Design Development Documents as approved by the Owner.

K. Design Phase Submissions. The Design-Builder shall provide a proposed Design Phase Submission Schedule for review and approval by the Owner, within fourteen (14) Days of the Execution Date. The Design Phase Submission Schedule shall identify for each design discipline and/or major system, at a minimum, the dates by which completed Schematic Design Document submissions (approximately 30% of the applicable design), completed Design Development Document submissions (approximately 60% of the applicable design), and completed Construction Document submissions (100% of the applicable design) will be provided to the Owner. Each such submission shall be a "**Design Proposal Package.**" The Design Phase Submission Schedule shall be developed such that the Design Proposal Packages for the Schematic Design Document submission, the Design Development Document submission, and the Construction Document submission for the individual design disciplines and/or major systems shall each be submitted for review and approval by Owner prior to the Design Builder commencing with subsequent phase of document preparation for such individual design

disciplines and/or major systems. Each such Design Proposal Package shall also be submitted in accordance with Section 4.23 of the General Conditions. Design Proposal Package submissions may be scheduled sequentially as necessary to coordinate with the overall Project Schedule. Design submissions shall comply with Owner's Design Professional Submission Requirements to the extent applicable, attached hereto as Exhibit W. In addition, the Design-Builder shall further provide in its Design Phase Submission Schedule, at a minimum, dates representing submission of the following:

1. A Design Proposal Package for the Building Management System design progress (including a descriptive narrative), wherein such Design Proposal Package shall be provided subsequent to the completed Schematic Design Document submissions and wherein the designs submitted are at a level of completion that is considered fifty percent (50%) of the final Design Development Document submission.
2. A Design Proposal Package for security design progress (including a descriptive narrative), wherein such Design Proposal Package shall be provided subsequent to the completed Schematic Design Document submissions and wherein the designs submitted are at a level of completion that is considered fifty percent (50%) of the final Design Development Document submission.
3. A Design Proposal Package including detailed layouts of lab types in the Main Lab Building including, but not limited to, BSL-2, BSL-3, vivarium, ABSL-3, ACL-3, positive-pressure clean reagent suites, EM suites, human mobility/brain-computer interface lab, chemistry, ISO clean rooms and central accessioning, as well as layouts of the central storage warehouse and archival storage freezer farm in the Trans-Shipping Facility. Supporting mechanical zones required for each identified lab type shall also be described, as well as the preliminary layouts for fixed furniture and equipment (FF&E) and the telephone/data systems. Such additional Design Proposal Packages shall be submitted subsequent to the completed Schematic Design Document submissions, with the designs submitted at a level of completion that is considered fifty percent (50%) of the final Design Development Document submission.
4. Within fourteen (14) Days of the Owner's review and approval, in accordance with General Conditions, Section 4.23, of the completed Schematic Design Document submissions, and of the additional Design Proposal Packages set forth in General Conditions, Subsections 4.22 (K) (1), (2), and (3), the Design-Builder shall provide its Initial GMP submission as further described in Contract, Sections 2.1.3 and 2.1.4.
5. Design Proposal Packages for the BIM LOD 300 (Building Information Model), including clash detection reports, at a level of (a) completed Design Development Document submissions, and (b) completed Construction Document design bid-package submissions.
6. A Design Proposal Package for the Fixed Equipment List including, but not limited to, chemical fume hoods, biosafety cabinets, environmental rooms, autoclaves, glasswashers, glassware ovens. The list should include model numbers and manufacturers, at no later than the completed Design Development Document submission.
7. A Design Proposal Package for the IWMS design progress (including descriptive narratives, Logic and Models), wherein such Design Proposal Package shall be submitted no later than when the drawings are at the fifty percent (50%) phase of completed Construction Documents.
8. A Design Proposal Packages for the proposed Energy Model, per DOE 2.1, at (a) the completed Schematic Design Document submission, (b) the completed Design Development Document submission, and (c) the completed Construction Document submission, all in accordance with the DASNY Design Professional Submission Requirements as set forth in Exhibit W.
9. Following Owner approval of the 100% Design Development submission and cost estimate and at approximately 80% design completion, the Design-Builder shall provide the final GMP submission along with any clarifications as further described in Contract, Sections 2.1.6 through 2.1.12.
10. Design Proposal Packages broken out by individual construction bid/permit packages, for the completed Construction Documents submissions, all in accordance with the DASNY Design Professional Submission Requirements as set forth in Exhibit W and associated cost estimates.

11. Any other interim Design Proposal Package submissions deemed necessary to progress the design per the accepted Design Phase Submission Schedule.

L. Design Phase Submission Schedule. The Design Phase Submission Schedule shall identify dates for each design discipline and/or major system for completed Schematic Design Document submissions, completed Design Development Document submissions, and completed Construction Document submissions (broken out by individual bid/permit package); any other interim design submissions that the Design-Builder determines necessary to maintain the overall Project Schedule; and the required time frames for the Owner to review and approve each proposed submission. The Owner shall make itself available for on-Site collaboration and review of all design submissions required to maintain the overall Project Schedule. The Design Phase Submission Schedule shall be updated at mutually agreed intervals and shall function as a collaboration tool between the Design-Builder and the Owner to manage the progress of the design process. If modular construction is proposed, the Design Phase Submission Schedule shall include the required approvals and anticipated review durations for review by the Authority Having Jurisdiction. The Design Phase Submission Schedule shall also include the proposed schedule for submitting design-related information necessary to confirm code compliance of the proposed design including, but not limited to, code compliance plans, geotechnical and/or environmental Site tests performed by the Design-Builder, DASNY Code Compliance Summary forms, the NYS Statement of Special Inspections, Storm Water Pollution Prevention Plan, LEED checklist, including any associated materials, fire-stopping schedules, energy modeling reports, Commissioning requirements, seismic requirements, and engineering analyses and calculations for civil, structural, mechanical, plumbing and electrical systems.

M. Not Used.

N. Schematic Design Phase Services. Throughout the course of the Schematic Design Phase, Design-Builder shall:

1. attend coordination meetings with the Owner as required;
2. develop a series of design solutions, including alternates, that explore a full range of building and site development possibilities including, but not limited to, various mechanical, electrical, plumbing, and structural considerations; floor to floor height; and major building materials. All such design criteria and solutions be established and developed within the parameters of the BOD and the Preliminary Cost Estimate, as submitted by Design-Builder and approved by Owner;
3. establish a basic Project strategy by addressing critical relationships between program elements and overall campus integration (e.g., building core(s), parking garage, bridge connection, if applicable, etc.);
4. provide narratives, drawings, and specifications prepared in accordance with Exhibit W – Design Professionals Submission Requirements for the Schematic Design Phase;
5. design the exterior door and window opening layout(s) and column layouts;
6. perform preliminary analysis of structural, HVAC, plumbing and electrical requirements;
7. provide renderings, models (other than working models), or other special items as required by the Owner;
8. select in consort with the Owner, the overall solution, or combination of solutions which best address the needs of the Owner;
9. provide minutes of all meetings and reports of all reviews and comments received from others. The meeting minutes shall be prepared using the Owner's Project Management System. Schematic Design phase meetings shall be held at least once every fourteen (14) Days or as required by Owner; and
10. the Design Development Phase shall not commence until the Owner approves the Schematic Design Phase submissions and the Owner provides Design-Builder with written authorization to proceed to the Design Development Phase.

O. Design Development Phase Services. Throughout the course of the Design Development Phase, Design-Builder shall:

1. attend coordination meetings with the Owner as required;
2. further develop the approved design solutions prepared through the Schematic Design Phase, including the mechanical, electrical, plumbing, structural, and all other systems required for the Project, as well as recommendations for bidding packages, order of construction, and timing. All such design criteria and solutions be established and developed within the parameters of the BOD and the Preliminary Cost Estimate and Initial GMP, as submitted by Design-Builder and approved by Owner;
3. further refine and finalize critical relationships between program elements and overall campus integration (e.g., building core(s), parking garage, bridge connection, if applicable, etc.);
4. further design the exterior door and window opening layout(s) and column layouts;
5. provide narratives, drawings, and specifications prepared in accordance with Exhibit W – Design Professionals Submission Requirements for the Design Development Phase;
6. provide renderings, models (other than working models), or other special items as required by the Owner;
7. provide written responses to all comments provided by Owner and Owner’s Technical Advisor to the Design Development Phase submissions;
8. provide specifications for any necessary testing services required by Owner;
9. provide minutes of all meetings and reports of all reviews and comments received from others. The meeting minutes shall be prepared using the Owner’s Project Management System. Design Development Phase, meetings shall be held at least once every fourteen (14) Days or as required by Owner; and
10. the Construction Document Phase shall not commence until the Owner approves the Design Development Phase submissions and the Owner provides Design-Builder with written authorization to proceed to the Construction Document Phase.

P. Construction Document Phase Services.

1. Design-Builder’s Construction Documents.
 - a. Design-Builder shall prepare and deliver to Owner and Owner’s Technical Advisor for its review the Construction Documents in an Owner-approved format.
 - b. provide written responses to all comments provided by Owner and Owner’s Technical Advisor to the Construction Document Phase submissions;
 - c. Owner or Owner’s Technical Advisor will review such Construction Documents for general design features. The Design-Builder is responsible for dimensions, quantities, accuracy, fit, adequacy of details, coordination with other trades, and meeting the requirements of the Contract Documents, including the BOD. The Design-Builder must request deviations from Contract Documents in writing and receive written approval from Owner before proceeding with such deviations all in accordance with General Conditions, Section 4.23. Any Work performed by Design-Builder that deviates from the Contract Documents prior to Owner’s agreement for such deviation shall be performed at Design-Builder’s sole risk. Design-Builder shall correct Defective Work identified by Owner at no additional cost to Owner.
 - d. The Construction Documents shall include all drawings and specifications as are necessary to obtain required permits and regulatory approvals, shall provide information necessary for the use of such

documents by those in the building trades, and shall include all documents required for the complete and final construction of the Project, other than such detail as is developed in shop drawings and otherwise during construction.

- e. Any drawings required by the Contract to be submitted to Owner or Owner's Technical Advisor for review shall be submitted by Design-Builder in an Owner-approved format as required in the Contract Documents, including Exhibit W – Design Professional Submission Requirements, without unreasonable delay and pursuant to the Project Schedule, and any Work affected thereby started prior to completion of review by Owner or Owner's Technical Advisor shall be at Design-Builder's risk.
- f. Owner or Owner's Technical Advisor may, from time to time, provide Design-Builder with information including, but not limited to, drawings, sketches, surveys, plans, calculations or other data, which must be independently verified by Design-Builder. Design-Builder must promptly notify Owner of any identified discrepancies in Owner-supplied documents.

Q. Requirements of Operation and Maintenance. Design-Builder shall provide all applicable manuals and requirements for operation and maintenance of the Facility and its associated equipment.

R. Integrated Workplace Management System.

1. The Design-Builder shall deliver an Integrated Workplace Management System (“**IWMS**”), approved by Owner, that includes all buildings, site, and infrastructure at the Project. The IWMS must allow the operators of the completed Facility to manage the primary operations and maintenance of its buildings and appurtenances. Prior to Substantial Completion, Design-Builder shall submit As-Built Drawings demonstrating that the IWMS complies with the Contract Documents, including the Technical Specifications and Prudent Industry Practice, and Building Information Models (“**BIM**”) which conform to the Construction Operations Building Information Exchange (“**COBie**”) specification. The IWMS must be delivered fully configured and populated with all asset and equipment information required by the COBie specification. In addition, the delivered IWMS must have the following integrated facility-management functionality:
 - a. Work order processing, including planning and recording of preventive and corrective maintenance;
 - b. Asset and equipment inventory management;
 - c. Space allocation and planning management; and
 - d. Environmental health and safety system management.
2. The IWMS must also be delivered integrated with a configured Building Automation System (“**BAS**”) that includes the monitoring and control of the following equipment and systems at the Facility:
 - a. All building mechanical systems, including HVAC;
 - b. Power systems;
 - c. Lighting;
 - d. Point monitoring of fixed and non-fixed laboratory equipment ; and
 - e. All fire safety systems, including fire alarms and all suppression systems
3. The security and access control system shall be a standalone system separate from the BAS but must be able to communicate with the BAS and fire safety systems. For security reasons, the IWMS, BAS and security and access control systems cannot be remotely hosted or managed and shall be hosted on internal, redundant servers.

4. In order to design, install, and commission the IWMS, Design-Builder shall enter into Subcontracts with Subcontractors that specialize in IWMS development and integration. Each such Subcontractor must have at least 5 years of experience installing systems of comparable sophistication and size in laboratory facilities. The experience and credentials of such Subcontractors shall be submitted by Design-Builder for Owner's review and approval.
5. Design-Builder is responsible for the entire IWMS Work and shall manage all systems integrator Subcontractors regarding all aspects of the system design, implementation, commissioning, and training. When the design of the Project begins, Design-Builder shall, and shall cause its systems integrator Subcontractors to, interface and work with the Project's, including Design-Builder's, design and construction professionals to establish standards for proper implementation, commissioning, maintenance, and training guidelines for the IWMS. Prior to Substantial Completion, Design-Builder and its applicable systems integration Subcontractors shall train the Owner's and the Client's staff on usage, operation, and maintenance of the installed IWMS.

Section 4.23 - Owner Reviews - Schematic Design Documents, Design Development Documents, and Construction Documents.

A. Not Used.

B. The sufficient and satisfactory completion of the Schematic Design Documents, Design Development Documents and the Construction Documents in accordance with the Contract Documents shall be the sole responsibility of the Design-Builder, subject in all instances to the approval of the Owner. Each Design Proposal Package submitted by the Design-Builder shall be accompanied by a list identifying in detail each and every instance where the Design Proposal Package deviates from the Scope of the Work, design criteria, and/or architectural intent of the Basis of Design (each, a "**Deviation List**").

C. Notwithstanding anything to the contrary contained in this Contract including, without limitation, the document precedent provisions of General Conditions, Section 2.09 (B), if the Design-Builder fails to specifically identify in a Deviation List any such deviation with the Scope of Work and Basis of Design, the Owner may at any time thereafter, and in its sole and absolute discretion and regardless of the then current stage or status of construction, require the Design-Builder to (i) revise the Construction Documents so as to eliminate such deviation, inconsistency, or conflict and to otherwise reflect the design or other elements contained in the Scope of Work or Basis of Design, and (ii) to construct the Project in accordance with such revision, which shall include, without limitation, removing and replacing any construction Work already performed. For purposes of this paragraph, a deviation from the Scope of Work or Basis of Design shall include, without limitation, any element in a Design Proposal Package that does not conform to the Scope of Work or Basis of Design. The Parties acknowledge and agree that in the course of negotiating this Contract that the Parties: (iii) have progressed the design from the Scope of Work or Basis of Design; (iv) have memorialized such progress in the Contract Documents; and (v) will continue to progress the design through Design Development, and Construction Documents. The Parties further agree that (vi) the recorded design progress conforms with the Scope of Work and Basis of Design, and (vii) to the extent that the Schematic Design Documents, Design Development documents, and Construction Documents continue to so conform with the Scope of Work and Basis of Design, the Owner will not unreasonably withhold its approval of the Schematic Design Documents, Design Development documents, and Construction Documents.

D. The Owner shall have the option, prior to proceeding with any Owner review, to return any Design Proposal Package for the following reasons: (i) if such Design Proposal Package or any part thereof, in the reasonable opinion of the Owner and as described by the Owner in a written Notice delivered to the Design-Builder, is not developed to the extent required by this Section; or (ii) to require further development, as described in reasonable detail in the written Notice from the Owner, of any portion of the Schematic Design Documents, Design Development Documents, or Construction Documents.

E. The Owner's reviews and subsequent reports, including the review reports, do not constitute an undertaking on the part of the Owner to assure or determine compliance of the Design Proposal Packages with the Contract Documents, which such determination shall be the responsibility of the Design-Builder. The Design-Builder shall notify Owner in writing within three (3) days of the date upon which it knows, or reasonably should know, that the timing of the Owner's review and response to a Design Proposal Package is not reasonable and said notice shall specify the design documents for which a

more prompt review is required. A failure by the Design-Builder to provide written notice as required by this section shall constitute a waiver of any and all claims arising out of an Owner delay in the review or response to any Design Proposal Package.

F. The Design-Builder shall cause the Design-Builder's Design Professionals and any of its Design Subcontractors, to modify or revise the Schematic Design Documents, Design Development Documents, and Construction Documents to the extent necessary to comply with or incorporate, as applicable, the comments, directions, and recommendations of the Owner that are contained in the Owner's comments. The Design-Builder shall not, however, be entitled to an adjustment to the GMP, or any extension of time in the Project Schedule, to compensate the Design-Builder for complying with the comments, directions, and recommendations of the Owner, unless such comments, directions, or recommendations involve a change in the Scope of Work or Basis of Design, or a delay to the Critical Path of the Project for which written notice has been provided under Section 4.23 (E). The Design-Builder shall further not be entitled to any such adjustments if such comments, directions, or recommendations arise as a result of a failure of the Schematic Design Documents, Design Development Documents, or Construction Documents to satisfy and comply with the requirements of the Contract Documents, as such documents may, from time to time, be modified at the direction of or with the approval of the Owner including, without limitation, the obligation to provide the Owner with fully functioning and functional facilities.

G. Within fourteen (14) Days following the receipt of any Owner's comments, the Design-Builder shall Notify the Owner in writing (such Notice being referred to as an "**Interim Design Verification Request**") whether, in the Design-Builder's reasonable judgment, the comments, directions, or recommendations contained therein involved a change in the Scope of Work or the Basis of Design (resulting in an "**Interim Design Change**"), and are not as a result of a failure in the Schematic Design Documents, Design Development Documents or Construction Documents to satisfy the requirements of the rest of the Contract Documents. Each Interim Design Verification Request shall also set forth any estimated adjustment in cost that the Design-Builder attributes to each such item and an estimated adjustment, if any, to the Project Schedule, in each case with detailed back-up therefor. In the event the Design-Builder fails to provide an Interim Design Verification Request within the fourteen (14)-Day period referenced in this Section, then the Design-Builder shall be deemed to have represented that the content of the Owner's comments does not present an Interim Design Change (and that the Design-Builder is thereby not entitled to an adjustment in the GMP or the Project Schedule). In such event, the Design-Builder shall incorporate the content of the Owner's comments into the corresponding Design Proposal Package, and upon complete incorporation of the same, the Owner shall issue a written approval of that Design Proposal Package.

H. Upon receipt of an Interim Design Verification Request, the Owner shall have the following options:

1. The Owner may modify, revise, or eliminate those items the Design-Builder asserts would constitute an Interim Design Change, to the extent the Owner concurs with the Design-Builder, in order to avoid any adjustment in the GMP or adjustment to the Project Schedule. In such event, the Design-Builder shall incorporate the content of the Owner's comments, as revised to reflect any of the Owner's additional modifications, revisions, and eliminations, and upon complete incorporation of the same, the Owner shall issue a written approval of the corresponding Design Proposal Package.
2. The Owner may reject an Interim Design Verification Request by written notice to the Design-Builder. In such event, the Design-Builder shall incorporate the content of the Owner's comments into the corresponding Design Proposal Package, and upon complete incorporation of the same, the Owner shall issue a written approval of corresponding Design Proposal Package.
3. The Owner may accept all or any portion of the Design-Builder's Interim Design Verification Request and cause to be prepared a Change Order to the Contract reflecting the contents of the Interim Design Verification Request, or any portion thereof, accepted by the Owner. In such event, the Design-Builder shall incorporate the Owner's review (as revised to reflect such revisions to such report as are necessary to incorporate the portion of the Design-Builder's Interim Design Verification Request accepted by the Owner), and upon complete incorporation of the same, the Owner shall issue a written approval of the corresponding Design Proposal Package. Any portion of an Interim Design Verification Request not accepted by the Owner shall be deemed rejected in the manner provided in Subsection (H) (2) of this Section 4.23 of the General Conditions.

I. The Design-Builder shall provide Notice to Owner, in writing, of any dispute Design-Builder has regarding the Owner's rejection of an Interim Design Verification Request or portion thereof. Such Notice shall be given no later than

fourteen (14) Days following the Design-Builder's receipt of the Owner's rejection. Such dispute shall be resolved in accordance with the terms and provisions of the Contract Documents; provided, however, the Design-Builder acknowledges and agrees that the Design Proposal Package, as revised in accordance with the requirement set forth above in General Conditions, Section 4.23 (H), shall be then governing documents and that the Design-Builder shall continue to perform the Work and shall do so in accordance with the then governing documents. If the Design-Builder fails to provide written Notice of its objection to the Owner's rejection of an Interim Design Verification Request, or portion thereof, within the preceding fourteen (14)-Day period, then the Design-Builder shall be deemed to have waived any claim for an adjustment in the GMP or the Project Schedule as a result of the Owner's rejection of the Interim Design Verification Request or portion thereof. In such event, the Design-Builder shall incorporate the content of the Owner's comments and any portion of an Interim Design Verification Request accepted by the Owner into the corresponding Design Proposal Package as provided in the preceding General Conditions, Section 4.23 (H).

J. Once the a Design Proposal Package for either the Schematic Design Documents, the Design Development Documents, or Construction Documents are completed reviewed and approved by the Owner as provided this Section, they shall thereupon be deemed as Contract Documents. For purposes of this Contract, (a) a Schematic Design Document or Design Development Document shall only be deemed completed upon the written concurrence of the Design-Builder and the Owner, and (b) a Construction Document shall only be deemed "**completed**" once (i) it is stamped as being "**issued for permit**" and thereafter submitted to the appropriate governmental agencies, (ii) it is revised to reflect all comments of such governmental agencies, and (iii) it is thereafter stamped as being "**issued for construction.**" Once a completed Schematic Design Document, Design Development Document or Construction Document is reviewed and approved by way of the process in this Section, it may not thereafter be modified, altered, or changed without the Owner's prior written approval.

K. The Owner's or the Owner's Technical Advisor's review, evaluation, comment, and approval of any Schematic Design Documents, Design Development Documents, any Construction Documents, any Submittals, or any other documents prepared by or on behalf of the Design-Builder shall be solely for the purpose of the Owner to determine for its own satisfaction the suitability of the Project, or portions thereof, detailed in such drawings, specifications, Submittals, and other documents and may not be relied upon by the Design-Builder, any Subcontractor, or any other third party as a substantive review thereof. The Owner or Owner's Technical Advisor, in reviewing, evaluating, commenting on, and approving any Schematic Design Documents, Design Development Documents, Construction Documents, Submittals or, other documents shall have no responsibility or liability for the accuracy or completeness of such documents, for any Defects or inadequacies therein, or for any failure of such documents to comply with the requirements set forth in this Contract or otherwise in the Contract Documents, the responsibility for all of the foregoing being the sole obligation of the Design-Builder.

L. Any Drawings required by the Contract to be submitted to Owner or Owner's Technical Advisor for review shall be submitted by Design-Builder without unreasonable delay and pursuant to the Design Phase Submission Schedule and the Project Schedule, and any Work affected thereby started prior to completion of review by Owner or Owner's Technical Advisor shall be at Design-Builder's risk.

Section 4.24 - Submittals.

A. Submittal Review. Design-Builder shall submit for Owner and Owner's Technical Advisor review, with reasonable promptness and in such sequence as to cause no delay in the Work, all Submittals required by the Contract Documents and the Submittal Schedule set forth in Exhibit R. The Design-Builder shall submit Drawings electronically in an Owner-approved format as required in Exhibits C and R. Owner's Technical Advisor and Owner will review Submittals for general design features with reasonable promptness. The Design-Builder shall notify Owner in writing within three (3) days of the date upon which it knows, or reasonably should know, that the timing of the Owner's review and response to Submittals is not reasonable and said notice shall specify the Submittal or Submittals for which a more prompt review is required. A failure by the Design-Builder to provide written notice as required by this section shall constitute a waiver of any and all claims arising out of an Owner delay in the review or response to any Submittal. The Design-Builder is responsible for dimensions, quantities, accuracy, fit, adequacy of details, and coordination with Subcontractors and Owner's Separate Contractors. The Design-Builder must request deviations from Contract Documents in writing and receive written approval from Owner.

B. Design-Builder Representation. By issuing Submittals to Owner or Owner's Technical Advisor for review, Design-Builder represents to Owner that it has determined and verified all Materials, field measurements, colors, catalog

numbers and similar data, and field construction criteria related thereto; that it has checked the accuracy and coordinated the information contained within each Submittal with the requirements of the Work and of the Contract Documents; and that the Submittals comply with the Contract Documents. Any purchasing, fabrication, erection, processing or shipping of the aforementioned Materials that begin prior to the Submittals having been submitted to Owner and the review time period having elapsed shall be done at Design-Builder's risk. Additionally, Design-Builder shall inform Owner that that portion of the Work is proceeding without an Owner or Owner's Technical Advisor review.

C. Schedule of Submittals. Design-Builder shall prepare and keep current, for Owner's information, a schedule of Submittals to be coordinated with the Project Schedule. Additionally, Design-Builder shall maintain a log of all Submittals provided to Owner or Owner's Technical Advisor for review and the date of each submission. Such log shall be provided to Owner on a weekly basis. Design-Builder shall not receive credit for the submission of any Submittal unless Owner or Owner's Technical Advisor deems the Submittal to be completed to the extent it is sufficient to allow Owner to determine that the Design-Builder will meet the requirements of this Contract. Owner and Owner's Technical Advisor shall follow the time frames and procedures set forth in Exhibit R in reviewing such Submittals; provided, however, that any failure by Owner to review any of such Submittals shall not relieve Design-Builder of any of Design-Builder's obligations under the Contract Documents. Unless otherwise specified in Exhibit R, Submittals requiring Owner review shall be submitted in such a time frame as to allow Owner and Owner's Technical Advisor fifteen (15) Business Days to review and comment on such Submittals unless a shorter time period is mutually agreed to by Owner and Design-Builder for Critical Path deliverables.

Section 4.25 - Value Engineering.

A. Design-Builder shall employ good-faith efforts to suggest to Owner, and shall review and evaluate with Owner, alternative approaches to the design, execution, and construction of the Work. The Parties acknowledge and agree that in the course of negotiating this Contract that the Parties have (i) progressed the design from the Basis of Design, (ii) memorialized such progress in Exhibit C to this Contract, and (iii) will continue to progress the design through Design Development and Construction Documents. The Parties further agree that (i) the design progress recorded in Exhibit C conforms with the Basis of Design and (ii) to the extent that the Design Development documents and Construction Documents continue to so conform with the Basis of Design throughout the process of value engineering and design, the Owner will not unreasonably withhold its approval of the Design Development documents and Construction Documents.

B. Throughout the Design Phase, the Design-Builder shall continually provide value engineering services, which such services shall be performed so as to assist the Owner in reducing design, construction, operation and maintenance costs with respect to the Project, while also maintaining or enhancing the Project's quality, efficiency, integrity, artistic content, functional performance and aesthetics. Factors to be considered by the Design-Builder in providing such services shall include, without limitation, site use, selection of building materials, equipment and systems, availability of labor, methods and means of construction and installation, and any other similar items creating cost savings for the design and construction of the Project, and/or cost savings for the operation and maintenance of the Project. Particular attention shall be given to possible options to maximize the benefits the Owner would derive upon completion of the Work.

C. The Design-Builder shall compile its value engineering analyses, advice, and recommendations in a written summary and shall submit the same to the Owner for review and consideration. Each value engineering proposal submitted by the Design-Builder shall include, without limitation, the following: (i) a detailed description of the difference between the requirements of the Contract Documents and the proposed changes and comparative advantages and disadvantages of each; (ii) an itemization of aspects of the Contract Documents affected by the value engineering; (iii) the impact of the value engineering on both the Project Budget and Project Schedule; (iv) the impact of the value engineering on long-term operating and maintenance costs for the Project; (v) the impact of the value engineering on the life expectancy of the associated portion(s) of the Project; (vi) a list of the projects, to the extent known, where the suggested value engineering or similar value engineering was used and the results experienced; (vii) any other information reasonably necessary to fully evaluate the suggested value engineering; and (viii) the date by which the Owner must accept the suggested value engineering in order for the Design-Builder's cost and time estimates to remain valid.

D. The Design-Builder shall proceed with the performance of the Work as required by the Contract Documents and shall not implement any value engineering or other recommendations unless such recommendations are included in a Change Order approved by Owner. Owner is under no obligations to accept any Design-Builder proposed value engineering option.

Section 4.26 - Modeling.

A. In the execution of the Work, Design-Builder will utilize Building Information Modeling (“BIM”) based on the AIA G202-2013 BIM Protocol, including BIM LOD 300 for Architectural Drawings, BIM LOD 400 for Coordination Drawings and BIM LOD 500 for As-Built Drawings. BIM shall be developed developed and delivered by Design-Builder to Owner upon Final Completion:

1. 3-D building model (turned over as described below);
2. The 3-D structural steel model;
3. Project Schedule;
4. Design-Builder shall provide Owner with a copy of the models as described in Exhibit R. With respect to the 3-D building model, Design-Builder shall provide Owner and Owner’s Technical Advisor a weekly or as otherwise agreed export from Design-Builder’s modeling software program to be used and viewed in a system approved by Owner. Design-Builder will provide direct reasonable access to the 3-D model at the Site after site mobilization. Prior to Final Completion, Design-Builder shall provide electronic files of such 3-D model able to be used and viewed by Owner in a system approved by Owner and permission for Owner to provide electronic copies of such 3-D model output to Owner’s Technical Advisor or any of Owner’s Separate Contractors if necessary to facilitate maintenance, repairs, modifications and/or operation of the Facility;
5. The Design-Builder shall run a conflicts and coordination check utilizing the Project Drawings within a three-dimensional software program of the Design-Builder’s choice to limit the number of physical conflicts that may occur during construction. Failure to run such a conflicts and coordination check or to resolve conflicts and coordination issues identified as a result of such a check prior to the initiation of the Work on Site shall constitute a: (a) conclusive and binding determination by the Design-Builder that resolution of the conflicts does not involve additional Work; and (b) waiver by the Design-Builder of all claims for additional compensation, damages, or time to achieve Substantial Completion as a result of the existence of physical conflicts;
6. Owner agrees that, upon delivery at Final Completion, the Modeling deliverables as described herein will be provided “as-is” and Design-Builder and its Subcontractors expressly disclaim all representations and warranties of any kind, expressed or implied, including the implied warranties of title, merchantability and fitness for a particular purpose, in connection with the Modeling deliverables provided. Owner accepts and assumes all risks in connection with the use of these Modeling deliverables after Final Completion by Owner, Owner’s Technical Advisor or others to whom Owner provides the Modeling deliverables and Owner hereby indemnifies, holds harmless, and releases Design-Builder, its Subcontractors and their respective officers, directors, employees, servants, agents, successors, and assigns from any and all claims or causes of action arising from Owner’s or its subcontractors’, agents’, or employees’ use of the Modeling deliverables.

B. Design-Builder shall submit Drawings electronically in an Owner-approved format for Modeling software as required in Exhibits C and R.

C. As related to the IWMS, the Building Information Model (“BIM”) shall conform to the Construction Operations Building Information Exchange (“COBie”) specification. The IWMS must be delivered fully configured and populated with all asset and equipment information required by the COBie specification.

Section 4.27 - Procurement of Long-Lead Time Items.

Design-Builder shall provide to Owner its schedule and procedure for procurement and storage of long-lead time items supplied by Design-Builder that constitute part of the Work and shall identify those portions of the Work where such procurement is advantageous to the Project. Design-Builder shall expedite the delivery of long-lead time items (provided or managed by Design-Builder) as agreed by the Owner, and provide storage and security for such items upon their delivery to the Site.

Section 4.28 - Royalties, Patents, and License Fees.

A. Design-Builder shall be responsible for paying all required royalties and license fees and shall procure, as required, the appropriate proprietary rights, licenses, contracts, and permissions for Materials, methods, processes, and systems incorporated into the Work. In performing the Work hereunder, Design-Builder shall not incorporate into the Work any Materials, Construction Equipment, methods, processes or systems which may result in Losses by Owner or Design-Builder arising out of infringement of any patent rights, copyrights, or proprietary rights. Design-Builder shall satisfy all demands that may be made at any time for such royalties or fees, and Design-Builder shall be solely liable for any Losses related thereto. At no additional cost to Owner, Design-Builder shall assign to Owner at the completion of the Project any licenses obtained in Design-Builder's or Owner's name that are required for the continued operation of the Facility.

B. Not Used.

C. The review by Owner's Technical Advisor or Owner of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its general appropriateness for the Work, and shall not be an approval of the use thereof by Design-Builder, including in violation of any patent or other rights or any third person.

D. If the claims and/or actions referred to in this Section arise from the use of a patented article specified by Owner and included in the Contract Documents, Design-Builder shall not be responsible for any damage arising from the use or installation of such patented article or process providing Design-Builder did not have, or would not have had with the exercise of the diligence expected of a fully competent Design-Builder, knowledge of the patented system or process.

Section 4.29 - Receiving, Handling and Storage.

Design-Builder shall receive, handle, store, warehouse or otherwise provide appropriate storage and maintenance (in accordance with manufacturers' recommendations) for all Materials and other supplies required for performance of the Work as described in Exhibit X. Design-Builder shall provide for the procurement or disposal of all soil, gravel, and similar Materials required for performance of the Work. All Materials and other supplies or equipment which are stored at the Site shall be: (a) stored in a warehouse or other appropriate location approved in advance in writing by Owner; (b) properly tagged and identified for the Work and segregated from other goods; (c) properly and regularly maintained in accordance with the manufacturer's recommendations with written records of such maintenance; and (d) properly insured. Design-Builder shall maintain appropriate records to document proper storage and maintenance of Materials and other supplies or equipment and shall make such records available to Owner upon request.

Section 4.30 - Use of Owner's Tools and Equipment at the Facility.

A. Design-Builder to Provide Tools and Equipment. Design-Builder must supply all tools and Consumables required to perform the Work. Design-Builder shall mark all of its tools by color code or Design-Builder nameplate before mobilizing to the Site. No marking shall be done on the Premises. Design-Builder shall not normally be allowed to borrow tools from Owner. Should Owner allow Design-Builder to borrow tools, only designated Owner employees shall be allowed to check out items from Owner's tool crib or storeroom. Owner retains the right to charge Design-Builder for any tools, equipment consumables, or Materials that are obtained from Owner that should have been supplied by Design-Builder.

B. Prior Approval Required. Design-Builder shall not use Owner's cranes, elevators, tools or hoisting facilities for handling construction materials or equipment ("**Owner Equipment**"), including those installed as a part of the Project, without prior approval from Owner. Should Owner permit Design-Builder to use Owner Equipment for Work under this Contract, such Owner Equipment shall be operated only by a qualified operator furnished by the Design-Builder. Design-Builder shall be responsible for the operation and maintenance of Owner's Equipment during periods that it is in use or assigned to Design-Builder's custody. The Parties shall document the condition of the Owner Equipment prior to Design-Builder's use. If the Owner Equipment is damaged by Design-Builder's use, Design-Builder, at Owner's discretion, shall repair or replace the Owner Equipment at Design-Builder's expense.

C. Waiver and Indemnity for Use of Owner Tools. Should Owner permit Design-Builder to use its Owner tools or should Owner provide transportation, labor, or other assistance in connection with the performance of the Work, such use or

furnishings, unless expressly provided otherwise, shall be at no cost to Design-Builder and Design-Builder hereby waives, releases, and renounces all Losses relating thereto, whether for personal injury, occupational sickness or disease or death or for physical damage to property, or loss of use thereof. In addition to Design-Builder's indemnity obligations under General Conditions, Section 14.09, and to the fullest extent permitted by Law, Design-Builder shall indemnify Owner for any and all Losses resulting in any way from Design-Builder's use of any of Owner Equipment in connection with the performance of the Work.

Section 4.31 - Cost Management Requirements.

A. Project Cost Report. A project cost report ("Project Cost Report") shall be maintained by Design-Builder at a level of detail approved by Owner.

B. The level of detail in the Project Cost Report will represent, at a minimum, the cost accounts and contracts that represent the Work scope. This level of detail should be consistent with the Project Detailed Estimate – the breakdown against which budgets will be established and reported. The Project Cost Report shall contain the information required in the agreed upon final Cost Report format. The final Cost Report format will be agreed upon by the Parties once the Project has been awarded.

C. Not Used.

D. The Project Cost Report shall be provided within ten (10) Business Days following the last Friday of each calendar month.

E. Payment Forecast. Design-Builder shall produce and maintain a Payment Forecast on a monthly basis for the duration of the Work.

F. Within thirty (30) Days of the Effective Date, Design-Builder shall provide Owner with a forecast of the Design-Builder's projected cash requirements for each month of the Project based on the Project Schedule. A Payment Forecast representing all of Design-Builder's Work and other project cost accounts/contracts that represent equipment and material contracts and all expected construction contracts will be developed within thirty (30) Business Days of the Effective Date and will be finalized following approval of Project Baseline Schedule.

G. Design-Builder shall revise the Payment Forecast to show actual costs incurred and invoiced to date, along with revised projections for each of the remaining months of the Work. The level of detail of the Payment Forecast will match the level of detail in the Project Cost Report. The format of the Payment Forecast shall be coordinated with the format of the Schedule of Values and the Project Schedule. Submittals will be in both a tabular and graphical formats.

Section 4.32 - Cost Control and Reporting Requirements.

A. Design-Builder will develop and implement Project Cost Controls tools, processes, and procedures contemplated by the Contract Documents.

B. Design-Builder shall employ its standard Project Cost Controls tools and procedures following Owner approval as the cost control tools for tracking the Project costs. The Project Controls cost control system shall include the following elements:

1. Change Control - The contract scope shall be managed by developing the Design-Builder's Project Team's awareness of the contract baseline and by promoting communication for complete Design-Builder Team participation in the change control process. Variations and deviations from the base scope, schedule, and budget of the Project will be reported through this change control process as defined in the Contract Documents, including General Conditions Article 7, which will identify impending changes in the scope of Work and provide early identification of changes, thus allowing the Team to maximize control of Project costs.

2. Budget Control - Budget control will be implemented using the standard Design-Builder's Project Controls tools following Owner approval. Such tools shall be able to easily interface with Owner's systems. The initial budget shall be consistent with the final GMP.
3. Home Office Cost Control - Home office labor cost and other costs will be budgeted and scheduled by department and discipline and will be reported against actual and forecasted hours and costs.

C. Design-Builder will provide other budget reports that convey cost status, define budgets, maintain forecasts, and track expenditures at a level of detail to:

1. Ensure that contractual scopes of Work are within the approved budgets.
2. Identify variances and report them to Owner.
3. Establish cost/benefit awareness.
4. Measure progress against budgets, forecasts, and the plan.

D. To ensure understanding of the deviations, Design-Builder will maintain the Project's estimate, in accordance with the Contract Documents and Prudent Industry Practice. Design-Builder shall maintain a set of detailed cost estimate books at the Project Site with Owner access upon request.

E. Prior to the establishment of the GMP and for Owner's review and approval, Design-Builder shall establish a Cost Contingency Management process which shall be used to monitor whether the Project is tracking to the contingency forecast and meeting expectations. The contingency analysis included in the GMP shall be used to load the initial budget.

1. Design-Builder shall monitor contingency usage against the budget at the level consistent with the contingency development. Each month, the Design-Builder Contingency shall be assessed and contingency release plans are updated.
2. A contingency analysis shall be performed during each Project forecast and serves as a baseline for subsequent contingency management. Design-Builder's contingency analyses, assessments, and resulting contingency release/usage plan shall reflect the Project risk at the current progress of Project execution.
3. Each month, Design-Builder shall issue a written report detailing its historical contingency use and its prospective use of contingency in the future on the Project.

F. Design-Builder shall provide a detailed Schedule of Values, inclusive of the entire estimated Project costs, broken down in sufficient detail and in a format as developed and mutually agreed upon by Owner and Design-Builder, and in sufficient detail as required by the Owner.

1. At a minimum, the Schedule of Values must be broken down by major expenditure categories (i.e., labor, materials, and equipment) and by the major cost types.
2. Design-Builder shall maintain a cash flow of the Schedule of Values which shall be closely related to the approved Project Schedule. Activity codes in the Project Schedule should match the organization of the Schedule of Values so that analyses can be made between the two.
3. Changes as a result of approved Change Orders will be added as separate line items in the Schedule of Values and updated appropriately.

G. Design-Builder shall provide a monthly report detailing the costs on the Project (the "**Monthly Cost Report**"), including: current budget, actual commitments, expenditures, cash flow, and the estimate at completion for all line items included in the Schedule of Values. Final format and level of detail is subject to Owner approval.

1. Cost Reports must be categorized by the reimbursable account broken down by labor hours and cost, material and equipment costs, with period, accumulative cost and estimated percent complete associated with each.
2. The Monthly Cost Report shall be coordinated with the contract invoicing. The timing of the Monthly Cost Report will be subject to Owner's approval taking into consideration Design-Builder's accounting procedures and reporting schedule.

ARTICLE 5 - MATERIALS AND LABOR

Section 5.01 - Design-Builder's Obligations.

A. The Design-Builder shall, comply with all the terms of the Contract Documents and complete all the Work in a good workmanlike manner, within the time specified in the Contract and to the satisfaction of the Owner. Design-Builder shall comply with the specific construction requirements as set forth in, or reasonably inferable from, the Contract Documents.

B. Design-Builder shall, and shall cause its Subcontractors to, procure and pay for, in Design-Builder's name as an independent contractor and not as an agent for Owner, the following items that are not explicitly specified to be furnished by Owner: all Design-Builder and Subcontractor labor; Materials; tools; Construction Equipment; Construction Aids; all Design-Builder Permits; Design-Builder insurance; security; supplies; manufacturing, and any other related services (whether on Site or off Site) required for completion and incorporation of the Work into the Project in accordance with the Contract Documents. Design-Builder shall also provide management and supervision necessary to satisfactorily engineer, design, procure, fabricate, expedite, deliver, receive, off-load, store, construct, inspect, maintain, start-up, and test all Work in accordance with the provisions of the Contract Documents. Unless the Contract Documents otherwise require, Design-Builder shall comply with manufacturer's instructions and printed directions for any materials, equipment, or related systems supplied by such manufacturer.

C. The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

D. Any labor, materials or means whose employment, or utilization during the course of the Contract may tend to or in any way cause or result in strike, work stoppages, delays, suspension of Work or similar troubles by workers employed by the Design-Builder, its Subcontractors or material suppliers, or by any of the trades working in or about the Site, or by other Design-Builders, their Subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by the Design-Builder of this requirement may be considered a default and the Owner may take action against the Design-Builder as set forth in General Conditions, Article 11 - Termination or Suspension, or such other action as the Owner may deem proper. Design-Builder and all Subcontractors agree to indemnify Owner for any damages, and fees associated with defending any action related to work stoppages, slowdowns, or strikes or, in the event an employee of Design-Builder or any Subcontractor successfully brings any suit in a court of law and/or charge or other action before any governmental agency against Owner regarding or arising out of any employment issues in respect of the employee's employment with Design-Builder or any Subcontractor.

Section 5.02 - Means and Methods.

A. Means and Methods. Design-Builder shall supervise and direct the Work in accordance with Prudent Industry Practice. Design-Builder, in conjunction with its Subcontractors, shall have sole responsibility for and have sole control over construction Means and Methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents. Unless otherwise provided in the Contract Documents, the Means and Methods shall be such as the Design-Builder may choose subject to the Owner's right to reject the Means and Methods proposed by the Design-Builder, which in the opinion of the Owner:

1. Will constitute or create a hazard to the Work or to persons or property.
2. Will not produce finished Work in accordance with the terms of the Contract.

3. Will be detrimental to the overall progress of the Project.

B. Design-Builder Control over Means and Methods. The Owner will not be responsible for and will not have control or charge over construction Means and Methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Owner will not be responsible for the Design-Builder's failure to carry out the Work in accordance with the Contract Documents and Applicable Laws. The Owner will not be responsible for or have control or charge over the acts or omissions of the Design-Builder, the Design-Builder's Design Professional, the Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

C. Design-Builder Obligation to Complete the Work. The Owner's approval of the Design-Builder's Means and Methods, or its failure to exercise its right to reject such Means and Methods, shall not relieve the Design-Builder of its obligation to complete the Work, nor shall the exercise of such right to reject create a cause of action for damages.

D. Design-Builder Planning. As a condition precedent to Owner's obligation to pay Design-Builder's first Application for Payment following the Effective Date, Design-Builder must submit, for Owner review, the following plans required for performing its Work. Owner's review of all such plans does not constitute an approval by Owner of Design-Builder's Means and Methods. The Design-Builder's plans must show in detail how the Design-Builder will meet its requirements in the Contract Documents, notwithstanding any review by Owner. Design-Builder shall have no claim for a change to the Milestone Dates or GMP because of the failure or inefficiency of any prescribed or suggested plan, means or method. If Design-Builder deploys or later alters any means or method of Work suggested by Owner, such deployment or alteration shall be at the sole risk and responsibility of Design-Builder. Design-Builder shall not make any changes to any plan specified below without providing written Notice to Owner accompanied by an explanation of the changes. Design-Builder shall submit copies of all revised plans to Owner for Owner's records.

1. Work Plan. Design-Builder must provide to Owner a Work Plan that contains a detailed description of the Design-Builder's intended Work execution model. It must contain sufficient detail for Owner to determine if the Work Plan is viable. The Work Plan should include, as a minimum: high level schedule indicating primary phases, general flow of work, key interfaces and all Milestone Dates; division of work with Subcontractor's list; architectural, engineering, and craft labor curves; Design-Builder's design, procurement and field management organization charts; methods of coordination and means for progress monitoring; Construction Equipment list; and a construction facilities arrangement plan drawing.
2. Project Execution Plan. Forty-five (45) Days prior to the Mobilization Date, Design-Builder shall submit to Owner's Representative for review and approval, Design-Builder's proposed Project procedures and execution manual ("**Project Execution Plan**"). Such Project Execution Plan shall include, but not be limited to, defining Design-Builder's plans for the following: risk management, communication management, integration management, scope management, materials and equipment management and handling, traffic management, quality assurance and quality control, cost management, change management, schedule management, procurement management and personnel (human resource) management. Once approved by Owner, such document shall be a Contract Document, and may not be modified absent Owner's approval of such modification. Design-Builder's approved Project Execution Plan, once approved, shall be attached hereto as Exhibit DD.
3. Project Logistics Plan. Design-Builder shall provide to Owner its iterative Site logistics plan for the Project as described in Exhibit LL which shall detail ingress and egress to and from the Site as well as activities on the Site.
4. Procurement Plan. Design-Builder shall provide to Owner its plan for sourcing; a procurement schedule; means to track progress; transportation requirements (including any materials or loads requiring permitting); any special requirements such as heavy haul that may require special permitting; storage; care, custody, and control.
5. Crane Plan. Design-Builder must submit its detailed "**Crane Plan**" for performing its Work which includes the selection of cranes, intended location, radii of cranes, lift plans, planned duration of usage and location of all cranes, and other necessary details. Design-Builder shall identify the specific criteria or maximum condition used to select each.

6. Material Lay-down, Storage, and Staging Plan. The Design-Builder shall submit a “**Material Lay-down, Storage and Staging Plan**” and update any contained in its proposal. The Material Lay-down, Storage, and Staging Plan shall identify all anticipated material lay-down areas; long term material storage needs and facilities; the shakedown sequence; the material staging area(s) and the site access roads to be utilized, fully describe any effect on the Crane Plan and any known or suspected coordination issues concerning materials storage related to the Work to include any temporary power or environmental conditioning that may be needed. The Design-Builder shall identify in the Material Lay-down, Storage, and Staging Plan the location and layout of all Design-Builder and expected Subcontractor office and storage trailers. Design-Builder shall include the anticipated procedures to manage and record: deliveries; storage locations; and storage maintenance efforts.

Section 5.03 - Not Used.

Section 5.04 - Design-Builder Permits.

Design-Builder shall obtain and pay for those Permits necessary for the performance of the Work which are required by the Contract Documents to be in Design-Builder’s name. Design-Builder shall obtain, at Design-Builder’s own expense, all required Design-Builder Permits in the name of Owner or Design-Builder, as appropriate. Design-Builder shall provide Owner with engineering and design data, information, and support with respect to the design and performance characteristics of the Work to the extent requested or required by Owner to assist Owner in obtaining all Owner Permits, including supporting Owner’s acquisition of, and maintaining compliance with, all Owner Permits. Design-Builder shall comply with all Laws applicable to the prosecution of the Work. If Design-Builder becomes aware that any of the Contract Documents are at variance with applicable Permits or Laws, Design-Builder shall promptly notify Owner.

Section 5.05 - Design-Builder's Title to Materials.

A. No materials or supplies for the Work shall be purchased by the Design-Builder or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by any other party. The Design-Builder warrants that the Design-Builder has full, good and clear title to all materials and supplies used by the Design-Builder in the Work, or resold to the Owner pursuant to the Contract Documents free from all liens, claims or encumbrances. Passage of title shall not affect risk of loss, which shall be governed by Section 5.05 (C), below.

B. For all materials, supplies or equipment that are stored at a location other than the Site, Owner shall receive prior Notice of the location, security, environmental protections and what materials, supplies or equipment will be stored at that location. For all materials, supplies, or equipment, Design-Builder shall comply with the Contract Documents, including General Conditions, Sections 8.01 (H) by providing Owner with an Owner-approved off-site storage agreement for such materials, supplies, or equipment. Owner shall have the right to access said premises at all reasonable times. All materials, supplies or equipment will contain signage that lists Owner as having title rights to said property and be properly tagged and segregated from other items. Signage shall also list the Owner as loss payee on any insurance. Owner’s rights to said material, supplies or equipment shall vest with Owner upon receipt of payment for same by Design-Builder. The Owner will provide an agreement for materials stored off-site and specific forms that the Design-Builder shall complete, execute and submit with any billing request for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases of liens, and inventory. The Owner may require the Design-Builder to certify in the agreement for materials stored off-site that the materials comply with one or more requirements of the Contract Documents or to provide documentary proof acceptable to the Owner that the materials comply with one or more requirements of the Contract Documents.

C. Transfer of Care, Custody, and Control of the Work. Unless otherwise permitted by the Contract Documents, transfer of care, custody, and control of the Work occurs at Substantial Completion pursuant to the procedures set forth in, or reasonably inferable from, the Contract Documents. The specific responsibilities of Design-Builder and Owner with regard to Substantial Completion of the Work are set forth in General Conditions, Article 9.

1. The risk of loss or damage to the Work and the Materials purchased by Design-Builder or its Subcontractors for incorporation into the Project will be the responsibility of Design-Builder until transfer of care, custody and control of the Work at Substantial Completion; provided, however, that if Owner, in writing, takes care, custody and control of any portion of the Work prior to Substantial Completion, risk of loss on that portion of the Work shall transfer to Owner, unless mutually agreed otherwise. Notwithstanding the transfer of care, custody and control of certain portions of the Work to the Owner on a system by system basis, the risk of loss for such portions of the Work shall remain with the Design-Builder until transfer of care, custody and control of the entire Work to the Owner is completed at Substantial Completion.
2. Upon transfer of care, custody and control of the Work at Substantial Completion, Owner shall thereafter be responsible for the operation and maintenance of same; provided, however, that Owner shall not be responsible for Warranty Work provided by Design-Builder.

D. System Turnover. Design-Builder shall submit System Turnover procedures and documentation consistent with the applicable provisions of the Contract Documents, including the General Requirements and Exhibit AA for Owner's approval, which approval shall not be unreasonably withheld.

E. Damage to Owner's Property or Facilities. After transfer of care, custody, and control of the Work to Owner upon Substantial Completion or otherwise, Design-Builder shall be responsible for Owner's existing property insurance deductible to the Owner's structures, materials, or equipment adjacent to or on the Site or the Premises to the extent such damage was caused by Design-Builder's negligence during Design-Builder's performance of the Work or any Warranty Work.

Section 5.06 - Existing Facilities.

A. Design-Builder acknowledges it shall obtain prior approval from Owner for the location of staging areas for construction vehicles, Construction Aids, and Construction Equipment and will, to the extent reasonably practicable, attempt to minimize the interference with and disruption of the ongoing use and enjoyment of the Premises. To the extent that Design-Builder inadvertently interferes with and disrupts Owner's ongoing use and enjoyment of the Premises, Design-Builder shall promptly mitigate and correct such interference and disruption at no cost to Owner.

B. Dirt and Debris. For every Day where Work is performed at the Site, Design-Builder shall clean all dirt and debris from all roads, streets, and sidewalks located within or in the vicinity of the Site including the primary access road to the Site. Design-Builder will control dust so that it does not disturb adjoining property or Persons in the vicinity of the Site.

C. Employee Congregation. Design-Builder shall not allow any of its or its Subcontractor's employees to congregate at any time on adjoining property or sidewalks, or in the vicinity of the Site. Design-Builder's and Subcontractor's employees shall limit conversation with the general public, Owner's employees or employees of Owner's Separate Contractors at the Site to that required for execution of the Work.

D. Site Operations. Design-Builder shall confine operations at the Site to areas permitted by legal requirements, applicable permits, and the Contract Documents and shall not unreasonably encumber the Site with any Materials, Construction Aids, or Construction Equipment. Design-Builder shall confine his Construction Equipment, Construction Aids, and storage Materials to areas designated, in writing, by Owner. Any storage of Materials, Construction Aids, and Construction Equipment shall, at all times, be performed in a manner that minimizes any interference with the use of the Premises and limits any nuisance.

E. Temporary Disruption of Services. Design-Builder must submit to Owner a written request for a temporary disruption of any services described in the Contract Documents. Such requests shall be in writing and must state the date on which Design-Builder wishes the disruption to commence. Owner must receive such request not less than five (5) Business Days prior to the request commencement date the disruption. Said request shall detail the exact nature, time and area of the existing facilities and the services affected by said disruption. Owner, in its sole discretion, shall determine within two (2) Days whether or not to grant such request for temporary disruption. No temporary disruptions shall be permitted without Owner's prior written authority.

Section 5.07 - Comparable Products (“Or Equal” Clause).

A. Whenever a material, article or piece of equipment is identified on the drawings or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue number, or make, said identification is intended to establish a standard. Any material, article or equipment of other manufacturers and vendors which performs satisfactorily the duties imposed by the design intent may be considered equally acceptable provided that, in the opinion of the Owner or the Owner's Technical Advisor, the material, article or equipment so proposed is of equal quality, substance and function and the Design-Builder shall not provide, furnish or install any said proposed material, article or equipment without the prior written approval of the Owner. The burden of proof and all costs related thereto concerning the “**or equal**” nature of the substitute item, whether approved or disapproved, shall be borne by the Design-Builder. In the event the Contract Documents designate any Materials by proprietary name or name of manufacturer, Design-Builder shall use such designated Materials unless specifically otherwise agreed to by Owner in writing. Proposed alternates or substitutes shall not be procured, used or installed by the Design-Builder until Owner has agreed to such alternates or substitutes. If non-conforming Materials are installed without Owner's consent, Design-Builder shall remove and replace the non-conforming Materials with Materials compliant with the Contract Documents at Design-Builder's expense. Unless the Contract Documents otherwise require, Design-Builder shall comply with manufacturer's instructions and printed directions for any Materials or related systems supplied by such manufacturer.

B. Not Used.

C. Where the Owner or the Owner's Technical Advisor, pursuant to the provisions of this Section, approves a product proposed by the Design-Builder and said proposed product requires a revision of the Work covered by this Contract, or the work covered by other contracts, all changes in the work of all contracts, revision or redesign, and all new drawings and details required therefore shall be provided by the Design-Builder at the cost of the Design-Builder and shall be subject to the approval of the Owner or the Owner's Technical Advisor.

D. No substitution will be permitted which may result in a delay to the Project.

Section 5.08 - Quality, Quantity and Labeling.

A. The Design-Builder shall furnish materials and equipment of the quality and quantity specified in the Contract Documents.

B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards.

C. The above requirements shall not restrict or affect the Owner's right to test materials as provided in the Contract Documents.

D. The Design-Builder shall develop and implement quality control plans to assure itself and the Owner that all Work performed by the Design-Builder and its Subcontractors complies fully with all contract requirements, and shall submit the plans to the Owner as required by the Contract Documents, including the provisions of this Section and the Submittals Section of the General Requirements. The Design-Builder's quality control plans shall be independent of any testing or inspection performed by or on behalf of the Owner.

E. QA/QC Program. Design-Builder shall provide the quality assurance and quality control activities necessary for the Work to ensure compliance with the Contract Documents. Design-Builder has outlined and defined the quality assurance and quality control requirements, which has been reviewed and accepted by Owner and made a part of the Contract Documents. These requirements shall be referred to as “**Design-Builder Quality Assurance and Quality Control Program**” (“**QA/QC Program**”). Attached hereto as Exhibit T is Design-Builder's general corporate QA/QC Program which Design-Builder represents and warrants meets Owner's minimum requirements. Ninety (90) Days prior to the Mobilization Date, Design-Builder shall submit a Project-specific QA/QC Program for Owner's review and comment. Based on the Owner's comments, Design-Builder shall submit the final Project-specific QA/QC Program within thirty (30) Business Days of receipt of Owner's comments and such final program shall take the place of and replace Design-Builder's general corporate QA/QC Program as revised Exhibit T. Design-Builder shall perform the Work in accordance with the

QA/QC Program. Design-Builder may not make any change to the QA/QC Program except as required by Laws, or as agreed by Owner in writing. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards. Design-Builder's QA/QC Program shall include measures undertaken by the Design-Builder to prevent the use of materials with counterfeit labels or other counterfeit indications of meeting a particular standard. Design-Builder must immediately notify Owner of any change in Laws requiring a change to the QA/QC Program. In the event that a change in any Laws results in a less stringent standard, the standards in effect at the Effective Date shall govern. The Design-Builder's field staff shall include personnel appropriately assigned and qualified to quality control and assurance as all or part of their job responsibilities. To the extent possible, these personnel shall be free of the influences of production and schedule requirements and have authority to stop and/or reject Work. Design-Builder shall prohibit discrimination against employees who raise safety or quality concerns.

F. Inspection and Testing Program. As part of the QA/QC Program, the Technical Specifications, and industry codes and standards used in the design of the Work, Design-Builder shall prepare and submit to Owner, for review and acceptance, an inspection and testing program, which will encompass all appropriate construction testing aspects of the Work, including provisions for adequate documentation of Design-Builder's performance of all such inspection and testing activities. Said program shall delineate Design-Builder's recommendations regarding the specific Materials to be inspected, as well as the nature and extent of such inspections. Such tests and inspections shall be included in the Project Schedule. At a minimum, Design-Builder shall inspect all such designated Materials procured by Design-Builder and its Subcontractors which are to be incorporated into the Work, and prior to installation of same, Design-Builder shall verify that said Materials conform to the Contract Documents. In addition, Design-Builder's QA/QC Program shall describe the inspection equipment calibration program, personnel qualification/training program, non-conformance identification, communication, segregation policies, a corrective action program to minimize recurrence of non-conformances, and auditing activities to ensure adherence to the QA/QC Program. As the Work progresses, Owner may instruct Design-Builder to perform supplemental inspections and testing as Owner deems necessary. Such supplemental inspections and testing will be a reimbursable cost except where additional inspection or testing is needed to verify that a nonconformance may extend to other equipment or regarding workmanship issues. The cost of such additional inspections or testing shall be the sole responsibility of the Design-Builder. If Design-Builder refuses, after notice from Owner, to correct the Defect or non-conformity or to remedy the problem in accordance with the Contract Documents and Design-Builder's schedule, Owner may, after written notice to Design-Builder, undertake the corrective action and back charge Design-Builder for all direct costs plus Owner's Administrative Fee.

G. Documentation. Design-Builder shall furnish Owner with documentation satisfactory to Owner showing the results of all inspections and tests. Owner shall be given not less than fifteen (15) Business Days' Notice of any shop tests, and not less than forty-eight (48) hours' Notice of any field tests to be made by Design-Builder and its Subcontractors in accordance with the inspection and test programs described in General Conditions, Section 5.08 (F) in order that Owner may witness any such tests. For tests conducted outside the continental United States, Owner shall be given not less than thirty (30) Business Days' Notice of any such tests. Owner shall be notified of any nonconformance or dispositions thereof no later than three (3) Business Days after its occurrence. Design-Builder shall notify Owner when the non-conformance is corrected. Design-Builder shall keep a complete list of all deviations, including those of its Subcontractors, and include all non-conformance documentation in the final As-Built package. Any such nonconformance or deviations shall be identified in Design-Builder's Monthly Reports.

H. Non-Compliance by Design-Builder with the QA/QC Program. Owner may immediately suspend any portion of the Work if in the sole opinion of Owner the Design-Builder or its Subcontractors have committed any material deviation from the QA/QC Program with respect to such portion. Such Work shall not thereafter proceed until Design-Builder agrees to conduct such Work in a manner satisfactory to Owner. Design-Builder shall not be entitled to an increase to the GMP or an extension of the Milestone Dates in the event Owner suspends Design-Builder's Work pursuant to this Section unless Design-Builder can establish it was performing the Work in compliance with the QA/QC Program as contained in Exhibit T.

Section 5.09 - Taxes.

A. Payment by Design-Builder. The GMP shall include all applicable Design-Builder Taxes. Design-Builder shall be responsible for the payment of the following taxes ("**Design-Builder Taxes**"): (a) all foreign and U.S. federal, state, local and other taxes which may be assessed on Design-Builder's income or gross receipts; (b) all payroll and other related employment compensation taxes for Design-Builder's employees; (c) taxes, duties, tariffs, excise fees associated with the importation or exportation of the Material and Equipment, and (d) all applicable sales, use, ownership or other similar taxes

made applicable to Design-Builder or its Subcontractors under applicable state Law. Taxes included in the GMP shall include only the actual Design-Builder Taxes owed by Design-Builder with no additional markups for overhead or profit.

B. Tax Exemption.

1. The Owner is exempt from payment of federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into the completed Work. These taxes are not to be included in the GMP. This exception does not apply to tools, machinery, equipment or other property leased by or to the Design-Builder or a Subcontractor, or to supplies and materials which, even though they are consumed, are not incorporated into the completed Work, and the Design-Builder and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.
2. The Design-Builder and Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate Governmental Agency, and use said certificates or other documentation as required by Laws. A sample form of a New York Sales and Use Tax Exemption Certificate is attached hereto as Exhibit Y for informational purposes only. Design-Builder may use this form for reference purposes with respect to the performance of the Work; provided, however, by providing this form Owner is not providing any tax advice.

C. Cooperation. The Parties shall cooperate with one another in obtaining any sales or use tax exemptions and qualifying for any real property tax abatements related to the Work or the Project.

D. Indemnification. Design-Builder agrees to indemnify and to hold Owner harmless, at Design-Builder's own cost and expense from any expenses, fines, costs, liabilities, or penalties to the extent resulting from the Design-Builder's or its Subcontractors' nonpayment of any taxes or withholding for which Design-Builder or its Subcontractors' is contractually or legally liable.

E. Assurances. Design-Builder agrees to present, if so requested by Owner, satisfactory evidence of payment of all Design-Builder Taxes to the proper authorities.

Section 5.10 - Shipping.

A. Design-Builder shall pick the mode of transportation and shipping consistent with Project Schedule requirements and with the Materials being shipped. Owner reserves the right to direct Design-Builder to route and/or specify the mode of transportation for shipments of all Materials or Construction Equipment purchased by Design-Builder for the Work if the Owner, in Owner's sole judgment, deems said method of shipment to be in the best interest of the Project. Design-Builder shall expedite shipments of Material as necessary in order to maintain the Project Schedule and meet the Milestone Dates.

B. Reputable Carriers. Design-Builder shall, and shall cause its Subcontractors to arrange to wrap, pack, crate, load, enclose, and brace all Materials purchased for the Work on a reputable carrier in a good, workmanlike manner and in accordance with applicable standard trade procedures and practices, or as may be otherwise specified by Contract Documents. Design-Builder shall ensure that all shipments for the Work use reputable carriers who meet or exceed Design-Builder's approved insurance requirements, all required vehicle permitting is current and that the equipment utilized meet the minimum equipment safety requirements required by applicable Laws and Prudent Industry Practice. Personal protective equipment shall be required for all equipment operators prior to entry onto the Premises.

C. Acceptance and Inspection of Material. Design-Builder shall not deliver, or allow any Subcontractor to deliver any Materials or Construction Equipment to the Site unless Design-Builder will be present at the Premises to accept and inspect, with qualified personnel under the QA/QC Program, such Materials or Construction Equipment. In no event will Owner accept on behalf of Design-Builder (including Subcontractors), or be responsible for, any Materials, Construction Aids, or Construction Equipment ordered by Design-Builder and delivered to the Premises. Any shipments that are sent directly to the Site (including those ordered by Subcontractors) shall be clearly marked to the Design-Builder's attention and show the Contract number issued by Owner to the Design-Builder. Design-Builder shall maintain all records of receipt inspections for Owner's review upon Owner's request.

D. Design-Builder Responsible. The Design-Builder shall be solely responsible for the determination of the acceptability of the Materials. Any participation by the Owner, Owner's Technical Advisor, or an Other Owner Authorized Party in the inspection process shall not relieve the Design-Builder of this obligation. Any additional costs associated with Design-Builder's failure to reject damaged or non-conforming Materials shall not be the basis for a Change Order increasing the GMP or extending the Project Schedule.

E. Shipping Destination. Delivery point for all Materials, Construction Aids, Consumables, and Construction Equipment shall, when appropriate, be F.O.B. Jobsite or in accordance with INCOTERMS (2010) DAP/DDP Site ("Deliver/Delivery Point").

F. Procurement/Expediting. Design-Builder shall incorporate the results of the expediting efforts into the Project Schedule updates as appropriate. Any significant changes to the procurement of materials, services or goods must be included in the Monthly Status Report.

G. Subject to Owner's approval, Design-Builder shall develop a program to monitor and track progress for procurement of engineered equipment and custom fabricated materials. This program will include as a minimum the inclusion of typical schedule milestones for each designated procurement item or group and the assignment of weighted values for each such milestone.

ARTICLE 6 - SUBCONTRACTS

Section 6.01 - Not Used.

Section 6.02 - Subcontracts.

A. Unless the applicable portion of the Work is self-performed by Design-Builder or as otherwise agreed to in writing by Owner, Design-Builder shall subcontract all Work to Subcontractors. The Design-Builder shall follow the procedures for pre-qualification, bid, and award according to Section 6.03 below. Design-Builder and all Subcontractors shall pay prevailing wages for all construction Work.

B. Design-Builder's Design 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 Section 6.04 (D) of this Article, the Owner shall be a named third-party beneficiary of the Design-Builder's Subcontract with the Design-Builder's Design Subcontractors, and Owner shall be entitled to rely upon all of the services performed by the Design-Builder's Design Subcontractors.

Section 6.03 - Subcontracting of the Work and Minimum Number of Bids.

A. Owner Right to Disapprove Proposed Subcontractors. The Owner reserves the right to disapprove any proposed Subcontractor on grounds that shall be disclosed to the Design-Builder to the extent legally permitted. Such disapproval shall not result in additional costs to the Owner.

B. Subcontract Prequalification, Bid and Award. For any of the Work on this Project, the following procedures will be followed by the Design-Builder:

1. **Formal Advertising.** For the purpose of obtaining expressions of interest from responsible bidders, formal advertising entails:
 - a. Preparation of a listing of specific bid packages on which competitive pricing will be solicited, of which the bid packages may be reviewed by the Owner, upon request, prior to publication; and
 - b. Publicizing the invitation for expressions of interest in bidding through distribution to prospective bidders, posting in public places, publication in newspapers and construction trade journals, and such other means as may be appropriate, including minority trade organizations, in sufficient time to enable prospective

bidders to prepare and submit their expressions of interest and qualifications and submit their bids before the time estimated for receipt of bids.

2. Pre-qualification of Bidders. Design-Builder shall obtain at least three (3) pre-qualified bidders for each part of the Work to be subcontracted and for each item of equipment or material to be supplied, except as otherwise approved by the Owner. Upon request, Owner may review the pre-qualified bidders. Subcontract bidders shall be required to meet specified qualifications before being invited to submit a bid on a separate bid package. The Design-Builder shall have the discretion to evaluate and select subcontractors who are invited to bid on a “best value” basis considering the subcontractor’s prior experience and success on similar projects, technical capacity, achievement of MWBE and SDVOB goals, and past record of compliance with Article 15-A of the New York State Executive Law. The Design-Builder’s pre-qualification process shall include, without limitation: (i) determining whether any prospective bidder has been subject within the past five years to a debarment or a finding of non-responsibility by the New York State Department of Labor, or by the New York State Workers Compensation Board, or pursuant to Executive Order 192; (ii) determining the status of the bidder’s registration with the New York State Department of State; (iii) identifying any serious Occupational Safety and Health Administration (OSHA) violations by the bidder; and (iv) requiring each bidder to disclose whether, within the past five years, it has been debarred by, found not responsible by, or lost its prequalification status from, any public agency. (Note: information regarding the first three items is publicly available at no charge through the respective agencies websites.) The Owner reserves the right to review and approve the qualification criteria prior to advertising by the Design-Builder.
 - a. To facilitate the pre-qualification of bidders, each bid package included in the consolidated announcement per General Conditions, Subsections 6.03 (C) (1) (a) and (b) above shall be described in sufficient detail to inform prospective bidders of the nature and scope of the work and shall contain instructions to interested bidders for submitting qualifications. Prospective bidders must identify the bid package(s) for work they intend to perform. They must also submit their years of experience in performing said work on contracts of similar size and complexity.
 - b. In concert with the Design-Builder, Owner reserves the right to review the qualifications of bidders. The Design-Builder shall require each bidder to provide a Non-Collusive Bidding Certification form with their bid. (See Exhibit KK) The Design-Builder shall also provide same form with each Subcontractor bid package.
3. Evaluation of Subcontractors. Upon completion of the pre-qualification process, the Design-Builder shall select subcontractors based on the lowest bid, except that with the Owner’s prior approval, subcontractors may be selected on a “best value” basis if the Design-Builder demonstrates to the Owner’s satisfaction that the subcontractor it proposes to select would be in the best interests of achieving the Project budget, schedule and/or achievement of MWBE goals.
4. If the bid for any bid package the Design-Builder intends to select or the aggregate of all packages exceeds the Design-Builder’s GMP budget line item price for such package, or if less than three bids are received in response to the invitation to submit a bid on any bid package, one of the following procedures shall be followed:
 - a. The Design-Builder shall negotiate with the bidders to reduce the price of the bid package to a cost which will not exceed the budget line item price; or
 - b. The Design-Builder shall reject all bids and issue a revised invitation to bid approved by the Owner; or
 - c. The Design-Builder shall award to the bidder for a price above the budget line item with the Owner’s approval; or
 - d. The Design-Builder shall perform the Work itself for the amount of the budget line item price if the provisions of General Conditions, Subsection 6.03 (C) (3) (a) cannot be accomplished, and if the Owner approves of same.

In addition, the Design-Builder and the Owner may agree to the need for negotiation of bid prices where same are within budget line item cost estimate. Whichever of the foregoing procedures is followed, there shall be no reduction of the scope or quality of the Project for any bid package in order to accomplish the Work of the Project.

5. Notification of Bid Receipt. The Design-Builder shall notify the Owner of the date, time, and location for receipt of all bids for the Work and the Owner may attend bid openings. The Design-Builder shall record the bids and provide a bid tabulation to the Owner.
6. Subcontract Awards. Subject to Section 6.06 hereof, the Design-Builder shall be responsible for making all subcontract awards, after following the process outlined in General Conditions, Subsections 6.03 (C) (1) (2), (3), (4) and (5) herein. Design-Builder shall supply the Owner with its bid evaluations, de-scoping analysis, rationale, recommendation for award and copies of all executed Subcontracts. The Owner reserves the right to reject an intended award, in any instance where the Owner's review of the prequalified bidder would result in withdrawal of said pre-qualification.
7. The Design-Builder shall provide a report that compares the bid results to the Trade Subcontract line items from the GMP.

C. The Design-Builder may at any time prior to the prequalification of bidders, identify and define other specialty subcontract packages which the Design-Builder determines may be helpful in the timely, cost-effective construction of the Project.

D. The Design-Builder shall include the Owner's General Conditions and General Requirements in each Trade Contract Bid Package. The General Requirements may be edited as appropriate in order to adapt them to the specific Bid Package.

E. All contract documents between the Design-Builder and the Trade Subcontractors shall be made available for review by the Owner prior to the execution of the applicable Subcontract.

F. The use of general allowances in Subcontracts is prohibited. The use of specific allowances may be permitted. Any specific allowances must be submitted by the Design-Builder to the Owner for approval, on a case by case basis.

G. Bidder Data Submittals. The submittal shall contain the name, address, and contact Person of the proposed Subcontractor, as well as a description of the Work to be performed and that Design-Builder has pre-qualified the proposed Subcontractor. Design-Builder shall also furnish information with respect to past performances, safety documents (inclusive of proposed Subcontractors EMR rating and OSHA 300 reporting), and financial status of the intended Subcontractors. Such financial information shall include, without limitation, financial statements, credit reports and other information requested by Owner. Owner shall have the right, from time to time, to conduct such credit investigations of all Subcontractors as Owner shall deem necessary or appropriate.

H. Debarment. In selecting a Subcontractor, the Design-Builder shall consider whether the proposed Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The Design-Builder shall not subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The Design-Builder shall not subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. Additionally, and without limitation, the Design-Builder shall not subcontract with any entity on the list of debarred and non-responsible entities maintained by the NYS Office for General Services in accordance with Executive Order 192.

I. VENDREP Report. Design-Builder shall secure and provide to Owner any prospective Subcontractor's complete NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) ("VENDREP Report") (which can be obtained from the Office of State Comptroller) and such additional information as Owner may require for each Subcontractor proposed for the Work with a Subcontract value of one hundred thousand dollars (\$100,000) or greater. If

requested by the Owner, the Design-Builder shall require a Subcontractor to update a VENDREP Report and information previously submitted to the Owner. Each additional request for approval of a proposed Subcontractor shall also be accompanied by a VENDREP Report that is properly completed and executed by the proposed Subcontractor and such additional information as Owner may require. To the extent Design-Builder has actual knowledge of any amendment to the VENDREP Report of a Subcontractor or of changes to, or with respect to, any Subcontractor that would require the amendment of the applicable Subcontractor's VENDREP report or information previously provided to Owner, Design-Builder shall notify Owner of such amendment or change and shall, if requested by Owner, request the applicable Subcontractor to provide additional information regarding such Subcontractor, including conducting a credit investigation, including securing a yearly VENDREP Report and such additional information as Owner may require from the applicable Subcontractor.

J. Not Used.

Section 6.04 - Contracts with Subcontractors.

The Design-Builder shall be responsible for requiring each Subcontractor, to extent of the Work to be performed by such Subcontractor, to be bound to the Design-Builder by all the terms, conditions, and requirements of the Contract Documents, and to assume towards the Design-Builder all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. The Design-Builder shall cause each Subcontractor to receive and review the provisions of the Contract Documents applicable to the Subcontractor, including but not limited to a copy of the Payment Bond for this Contract. Upon request of the Owner, the Design-Builder shall provide written proof satisfactory to the Owner that each Subcontractor has received and reviewed the provisions of the Contract Documents applicable to such Subcontractor, including but not limited to, a copy of the Payment Bond for this Contract. Nothing contained in the Contract or any subcontract shall create any contractual relationship between any Subcontractor and the Owner, except the requirements set forth in General Conditions, Article 15 for each Subcontractor to procure insurance policies on which the Owner and Owner's Client are insureds and the obligations of each Subcontractor to defend, indemnify and hold harmless, to the fullest extent permitted by law, the Owner and Owner Indemnitees against claims by third persons for wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of the Subcontractor's work.

Section 6.05 - Code of Business Ethics.

Design-Builder is required to have each Subcontractor, at all tiers, complete Owner's Code of Business Ethics Certification form prior to the Subcontractor beginning its portion of the Work. The applicable language and forms for Design-Builder to complete are attached hereto as Exhibit HH. The applicable forms shall be filed by the Design-Builder with the Owner. A failure to comply with this requirement may result in the Subcontractor(s) being removed from the Project Site.

Section 6.06 - Owner's Rejection of Subcontractors.

Without compensation to Design-Builder, Owner retains the right to disapprove of any recommended Subcontractor. The Design-Builder shall promptly furnish such information as the Owner's Representative may require concerning the proposed Subcontractor's ability, qualifications, and MBE/WBE or SDVOB status, as well as any additional information requested by the Owner in order to determine compliance with terms of this Article. Owner's Representative shall notify Design-Builder within fifteen (15) Business Days if it objects to any proposed Subcontractor. If such approval concerns an award, Design-Builder shall identify a suitable substitute party in writing within ten (10) Business Days after it receives Owner's disapproval of a proposed Subcontractor and resubmit to Owner for approval as soon as practicable.

Section 6.07 - Amendments to Subcontracts

Design-Builder shall not amend or modify subcontracts with respect to subcontractor obligations for Owner indemnification and insurance coverage as set forth in this Contract without Owner's prior approval.

Section 6.08 - Approved Equipment Subcontractors.

A. Approved Equipment Subcontractors List. An approved equipment subcontractors list shall be set forth in the Technical Specifications, Exhibit C. Design-Builder may request, in writing, that additional vendors be added to the list subject to Owner's approval, with such approval not to be unreasonably withheld.

B. Commonality of Non-Major Equipment. Design-Builder shall use good faith efforts to use Materials for the Work that are the same or similar to the Materials that Owner uses at other facilities within the Project or with similar installations at the Facility and cause its Subcontractors to do the same.

Section 6.09 - Subcontract Assignment.

A. In the event of a Termination for Cause under General Conditions, Section 11.01, Owner shall have the right to an assignment of Subcontracts as set forth in Section 11.01 D 2.

B. Not Used.

Section 6.10 - Pricing of Subcontracts.

Subcontracts shall not be awarded on the basis of cost plus a fee or time and materials without the prior written consent of Owner as to each such Subcontract.

Section 6.11 - Coordination of Work of Subcontractors.

Design-Builder is responsible for the coordination of all Work. All Work provided by Subcontractors must be coordinated by Design-Builder so that all such Work is complete, coordinated and in compliance with the Contract Documents. All Work which is incomplete, or not coordinated, or which fails to comply with the Contract Documents shall be removed and/or corrected by Design-Builder at no additional cost to Owner.

Section 6.12 - Not Used.

Section 6.13 - Conformance with Contract Documents.

Design-Builder shall be responsible for and shall take such steps as are necessary to provide that all Subcontracts conform to the requirements of the Contract Documents.

Section 6.14 - No Contractual Rights by Subcontractor against Owner.

The provisions of this Article shall not empower any Subcontractor with any contractual rights against Owner.

Section 6.15 - Not Used.

Section 6.16 - Owner/Subcontractor Communication.

Owner may, at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by Design-Builder and the action taken thereon by Owner on account of Work done by such Subcontractor. Owner shall have no obligation to pay or to see to the payment of any monies to any Subcontractor, except as otherwise may be required by Laws. Notwithstanding the foregoing, any payments made by Owner to any Subcontractor shall be reimbursed by Design-Builder or may be offset by Owner against and deducted from any future payments due to

Design-Builder from Owner, provided that no such payment by Owner shall be made without first obtaining Design-Builder's approval.

Section 6.17 - Trade Jurisdiction.

The Design-Builder and all Subcontractors must comply with the existing Project Labor Agreement attached hereto as Exhibit QQ.

Section 6.18 - Not Used.

ARTICLE 7 - CHANGES IN THE WORK

Section 7.01 - Changes.

A. Definitions. For the purposes of this Article the following definitions shall apply:

1. Tier 1 Subcontractor: A contractor or consultant subcontracted directly by the Design – Builder.
2. Tier 2 Subcontractor: A contractor or consultant subcontracted by a Tier 1 Subcontractor.
3. Tier 3 Subcontractors: A contractor or consultant subcontracted by Tier 2 or lower tier Subcontractor.

B. Changes within the GMP. Changes within the GMP are funded by the Design-Builder Contingency and do not increase the Project GMP. The value of the Design-Builder Contingency expenditures will be determined in accordance with General Conditions, Article 7.

C. Changes to the GMP. Without invalidating the Contract, the Owner, in writing and at any time, may order changes in the Work by altering, adding to, or deducting from the Work of the Contract with resulting changes to the GMP, the Project Schedule, the Milestone Dates, and/or other applicable provisions of the Contract Documents through the issuance of an Owner's Change Order. Said changes shall be governed by this General Conditions, Article 7.

1. No change to the GMP or in the Work is effective unless the Owner executes and delivers a Change Order to the Design-Builder. No payment for a change in the Work is due the Design-Builder unless and until a Change Order is executed and delivered by the Owner to the Design-Builder and the Design-Builder has performed the change in the Work. The standard language of the Owner's Change Order form is hereby accepted by Design-Builder. Alterations by Design-Builder to the standard language of Owner's Change Order form are not permitted, and no alteration to the standard language of the Owner's Change Order form shall be accepted. If the Design-Builder requests an adjustment to the Substantial Completion date for a change in the Work and the Owner agrees, an increase or decrease to the duration, in Days, shall be included in the Change Order. Owner is not required to accept Design-Builder's cost estimate for the changed Work until the Design-Builder's cost estimate has been priced in a manner consistent with the requirements of the Contract Documents, and reviewed and approved by the Owner in accordance with the Owner's internal procedures. If the Design-Builder believes that the Critical Path related to the Substantial Completion date is affected by a change, Design-Builder shall submit an appropriate schedule fragmet demonstrating the prospective changes to the affected Milestone Dates. Any proposed change to the Project Schedule or Milestones Dates must be made in a Change Order and is subject to review and approval by the Owner.
2. Notwithstanding General Conditions, Section 7.01 (C) (1) above, the Owner, at its discretion, may execute and deliver to the Design-Builder a Notice to Proceed directing the Design-Builder to proceed immediately and diligently with the change in the Work described in the Notice to Proceed. The Owner, upon execution and delivery of the Notice to Proceed to the Design-Builder, is obligated to adjust the Contract for the change in the Work described in the Notice to Proceed; the extent of the adjustment(s) will be determined using the methods of General Conditions Article 7 specified in the Notice to Proceed, this General Conditions Article, and negotiations with the Design-Builder; the adjustment(s) will be stated in the Change Order to be executed and delivered by the Owner to the Design-Builder. The Design-Builder, upon receipt of the Notice to Proceed,

is obligated to proceed immediately and diligently with the change in the Work described in the Notice to Proceed while the adjustment(s) are determined. The Notice to Proceed shall be processed through the Project Management Program prior to execution and delivery by the Owner to the Design-Builder. No alteration to the standard language of the Owner's Notice to Proceed form shall be accepted. No payment for the change in the Work is due the Design-Builder until the Change Order is executed and delivered by the Owner to the Design-Builder and the Design-Builder has performed the change in the Work. Additional Work performed by Design-Builder without a written authorization from Owner shall be performed at Design-Builder's sole risk. The Owner determines the duration between execution and delivery of the Notice to Proceed and execution and delivery of the Change Order.

3. Design-Builder's failure to diligently and timely proceed in accordance with Owner's direction in a Notice to Proceed or Change Order executed and delivered by the Owner to the Design-Builder shall be a material breach of the Contract if Design-Builder's failure to diligently and timely proceed pursuant to Owner's written direction to do so causes a delay to the Critical Path, unless the Owner in writing directs otherwise.
4. Not Used.
5. No Change Order is executed by the Owner unless and until the Change Order is processed through the Project Management Program and:
 - a. For a Change Order for an amount less than \$5,000, the regional project manager, the chief project manager, or the director – construction, for the Project signs the Change Order;
 - b. For a Change Order for an amount of \$5,000 to \$150,000, the director - construction administration, the chief - project controls, or the managing senior director – construction signs the Change Order; and
 - c. For a Change Order for more than \$150,000, the managing director - construction or other authorized officer of Owner signs the Change Order;
 - d. Notwithstanding the preceding provisions of this subparagraph, a Change Order which modifies the Project Schedule, Milestone Dates or other applicable provisions of the Contract Documents and has a monetary amount less than \$5,000 shall be executed as a Change Order of \$5,000 to \$150,000.
 - e. No Change Order delivered to the Design-Builder is valid unless the Change Order has been executed in accordance with this subparagraph. The Owner, by written notice to the Design-Builder, may add or delete employees from the list of employees authorized to sign for the Owner a category of Change Orders and may limit an employee's authorization to sign a Change Order to part of a category. Notwithstanding any other provision of the Contract, the written notice adding an employee to the list of employees authorized to sign for the Owner a category of Change Orders and the written notice limiting an employee's authorization to part of a category may be put on one or more Change Orders for the Contract.
 - f. By accepting and executing any Change Order the Design-Builder, its heirs, executors, administrators, successors, and assigns releases and forever discharges the DASNY, its successors, and assigns from any and all actions, causes of action, claims and demands whatsoever in law or in equity which the Design-Builder ever had, now has or may have against DASNY in any way arising out of the applicable Change Order.
 - g. No Change Order or any extension of time for performance granted by DASNY constitutes an admission by DASNY that it is responsible for any delays or hindrances to Work under the Contract. No claims for increased costs, changes, expenses, or damages of any kind shall be made by the Design-Builder against DASNY for any delays or hindrances from any cause whatsoever, including but not limited to any delays or hindrances contemplated by and respective Change Order. DASNY reserves its rights to rely on and enforce the terms of the Contract and New York Law in connection with any Change Order, and further reserves its right to independently assess and allocate responsibility for delay to the Contract, in accordance with the General Conditions.

D. The GMP may be increased or decreased only by a Change Order. The amount of any Change Order or Design-Builder Contingency expenditure is determined by one or more of the following methods, as determined by the Owner:

1. By applying the applicable unit price or prices contained in the Contract Documents, or negotiated pursuant to the provisions of this General Conditions Article. Unit prices are limited to the quantities specified in the Contract Documents or prior Change Order. Unit prices for quantities greater than specified in the Contract Documents or prior Change Order may, in the Owner's discretion, be subject to negotiations between the Owner and Design-Builder.
2. By estimating the fair and reasonable cost of the change in the Work or deleted Work.
3. By determining the actual cost of the change in the Work and considering the following:
 - a. Labor, including all wages and required wage supplements, paid to employees below the rank of superintendent directly employed at the Site for the change in the Work. Minimum wages are the prevailing rate of wages defined by the NYS Department of Labor. Actual wages in excess, paid by the Design-Builder, may be considered by the Owner.
 - b. Premiums or taxes paid by the Design-Builder for worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by Law, net of actual and anticipated refunds and rebates.
 - c. Materials associated with the change in the Work.
 - d. Equipment, excluding hand tools, which in the judgment of the Owner, would have been or will be employed in the Work. The Owner may employ the use of rental rates it deems most appropriate from the information in the "**Equipment Watch Retail Rental and Equipment Watch Cost Recovery**" databases. In no case will the equipment rental cost exceed the purchase price of the equipment. Self-owned equipment is defined to include equipment rented from Design-Builder-controlled or affiliated companies. It is the duty of the Design-Builder to utilize either rented or self-owned equipment that is of a nature and size appropriate for the Work to be performed. The Owner reserves the right to determine reasonable and appropriate equipment sizing, and at the Owner's discretion, it may adjust the costs allowed to reflect a smaller or less elaborate piece of equipment more suitable for performance of the change in the Work. The Owner will determine if equipment is rented from a company controlled by or affiliated with the Design-Builder.
 - e. To determine the daily and hourly rate of self-owned equipment, the monthly rate shall be divided by twenty-two (22) to establish a daily rate; or by one hundred and seventy-six (176) to establish the hourly rate. The operating cost listed in the "**Equipment Watch Retail Rental and Equipment Watch Cost Recovery**" databases would be added to this rate to establish the billable rate.

E. For each change in the Work, the Design-Builder shall submit to the Owner, within the time period provided by the Owner, the following information:

1. A detailed proposal of labor, material, and equipment costs for the change in the Work. The Design-Builder and its Subcontractors shall use the Owner's Contractor and Subcontractor Change Order Proposal Forms, which are available directly from the Owner or from the Dormitory Authority's website <http://www.dasny.org>.
2. The Design-Builder's and Subcontractor's proposals shall provide a notarized statement, as follows:

"I hereby certify that the value for the labor, material and equipment that comprise the proposal, represents the value of said work, material and equipment for the work performed or to be performed, pursuant to the Contract between the undersigned and the Dormitory Authority and that no overhead or profit is included in the proposal for a change to the Work performed by any Subcontractor or for any major equipment or material supplier that is a subsidiary or an affiliate of this firm."

3. Signed and notarized Labor Rate Worksheet to determine hourly rates for each classification of worker associated with the change in the Work. The Design-Builder shall use the Owner's Labor Rate Worksheets, which are available directly from the Owner or from the Dormitory Authority's website <http://www.dasny.org>. Only hourly rates for each classification of worker approved by the Owner can be used to determine the adjustment of the Contract amount for a Change Order. Only an authorized officer of Owner or authorized employee of Owner's Project Controls Unit can approve Labor Rate Worksheets.
4. Narrative and fragnet schedule, which describes the impact on the Project CPM schedule in Days associated with the change in the Work, if the Design-Builder requests a change in any Milestone Date, including the date to achieve Substantial Completion. Owner may waive, in writing, this requirement for requests to change the date to achieve any Milestone Date including Substantial Completion made prior to the Owner's approval of the initial Project CPM schedule. Owner's waiver of this requirement can be made only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit. If the Design-Builder does not submit a narrative and fragnet schedule, the Design-Builder acknowledges that the Change Order does not require a change in the date to achieve Substantial Completion.
5. The Design-Builder agrees to provide, at the Owner's request, any additional documentation to further verify labor, material, equipment, and any other cost sought for a change in the Work.
6. The Design-Builder agrees to provide, at the Owner's request, written justification for a change in the Work.

F. Each Design-Builder's written change proposal shall be reviewed by the Owner consistent with the requirements of the Contract.

1. Owner and Design-Builder shall negotiate in good faith to agree on the adjustment(s) to the Contract for each change in the Work. The Owner is not required to respond to any change proposal submitted by the Design-Builder until the Design-Builder submits a change proposal that complies with the Contract Documents. Negotiations under this General Conditions Article shall not cause Design-Builder to stop Work or impact the Project schedule. The Design-Builder's proposal for a change in the Work is approved and accepted by the Owner only by the Owner's execution and delivery of a Change Order to the Design-Builder. See General Conditions, Section 7.01 (D) (5) for the requirements of execution and delivery.
2. If the Owner has executed and delivered a Notice to Proceed to the Design-Builder for a change in the Work and the Owner and the Design-Builder cannot agree on the adjustment(s) to the GMP, the Milestone Dates, or other applicable provisions of the Contract Documents for the change in the Work described in such Notice to Proceed, the Owner shall execute and deliver a Forced Change Order to the Design-Builder in an amount and with such other provisions that the Owner considers to be fair and reasonable for the change in the Work described in such Notice to Proceed and Forced Change Order. If the Design-Builder does not accept the Forced Change Order, the Design-Builder may submit a Claim in accordance with General Conditions, Article 10.

G. Any information representing the value of the Work performed, materials supplied and equipment utilized contained in the Design-Builder's and Subcontractor's proposals that constitutes False Representation may subject the Design-Builder or Subcontractor to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.

H. The compensation specified in the Change Order executed by the Owner and delivered to the Design-Builder includes full compensation for the changes in the Work covered thereby, and the Design-Builder waives all rights to any other compensation, damages, or expenses for the changes in the Work described therein.

I. The Design-Builder shall furnish satisfactory bills, certified payrolls, vouchers, and other cost documentation covering all items of cost and when requested by the Owner shall give the Owner access to all accounts and records relating thereto, including records of Subcontractors and material suppliers.

J. At Substantial Completion, the Owner shall address increases or decreases in Project-specific bonding, liability insurance, and builder’s risk insurance costs which may have resulted from changes in the Work. The Design-Builder shall provide satisfactory proof of and paid invoices, including cancelled checks or bank statements showing payment, for such increased costs. The Owner will not pay overhead and profit on any increased costs for bonding, liability insurance, or builder’s risk insurance.

K. General Conditions Section 10.01 applies when the Owner determines that a decision, response, direction, action, omission, or condition does not require performance of Extra Work.

Section 7.02 - Overhead and Profit.

Design-Builder, Tier 1, and Tier 2 Subcontractors performing either contingency Work or change order Work shall be entitled to compensation for the Allowable Construction Costs plus the specified markup and the Design Builder’s Fee only as designated below in this Section 7.02.

For Design-Builder self-performed contingency Work or change order Work, Design-Builder shall be entitled to its Allowable Construction Cost for the Work performed, plus the markup identified below.

For Subcontractor-performed contingency Work or change order Work, each Tier 1 and/or Tier 2 Subcontractor shall be entitled to the Allowable Construction Cost for the Work performed, plus the markups identified below. Design-Builder shall also be entitled to its Design-Builder Fee on the total value of the Subcontractor-performed Work and associated markups.

In the examples listed below, the Design-Builder’s fee of 3% is used only for illustrative purposes.

A. See Example A1 for Work performed directly by the Design-Builder. See Example A2 for Tier 1 Subcontractor-performed Work. To the extent that any contingency or change order Work is performed by Subcontractors for the benefit of the Design-Builder, add three percent (3%) for the Design-Builder’s Fee.

Example A1 (Design-Builder Self-Performed Contingency Work or Change Order Work):

Design-Builder Allowable Construction Cost	\$1,000
20% markup	<u>\$200</u>
Total	\$1,200

Example A2 (Tier 1 Subcontractor Performed Contingency Work or Change Order Work):

Tier 1 Subcontractor Allowable Construction Cost	\$1,000
20% Tier 1 Subcontractor overhead and profit	<u>\$200</u>
Total for Subcontractors	\$1,200
3% Design-Builder’s Fee	<u>\$36</u>
Total	\$1,236

1. See Example B1 for contingency Work or change order Work, respectively, performed by a Tier 2 Subcontractor under contract with a Tier 1 Subcontractor, where the estimated cost, unit cost, or actual cost is Ten Thousand Dollars (\$10,000.00) or less; add to the Allowable Construction Cost a sum equal to twenty percent (20%) of the base Tier 2 Subcontractor cost, for the benefit of the Tier 2 Subcontractor. For the benefit of the Tier 1 Subcontractor; add an additional sum equal to ten percent (10%) of the Tier 2 Subcontractor’s Allowable Construction Cost. To the extent any contingency Work or Change order Work is performed by Subcontractors, for the benefit of the Design-Builder add three percent (3%) for the Design-Builder’s Fee.

Example B1 (Tier 2 Subcontractor-Performed Contingency Work or Change Order Work):

Tier 2 Subcontractor Allowable Construction Cost	\$1,000
20% Tier 2 Subcontractor overhead and profit	\$200
Tier 2 Subcontractor Total	\$1,200

GENERAL CONDITIONS OF THE WORK

10% Tier 1 Subcontractor overhead and profit on Tier 2 Subcontractor Allowable Construction Cost	<u>\$100</u>
Total for Subcontractors	\$1,300
3% Design-Builder's Fee	<u>\$39</u>
Total	\$1,339

- See Example C1 for contingency Work or change order Work performed by a Tier 2 Subcontractor under contract with a Tier 1 Subcontractor that exceeds Ten Thousand Dollars (\$10,000) in estimated, unit costs or actual cost; add to the Allowable Construction Cost a sum equal to twenty percent (20%) of cost for the benefit of the Tier 2 Subcontractor. For the benefit of the Tier 1 Subcontractor; add an additional sum equal to ten percent (10%) of the first Ten Thousand Dollars (\$10,000) of the Tier 2 Subcontractor's Allowable Construction Cost, plus five percent (5%) of the next Ninety Thousand Dollars (\$90,000) of the Tier 2 Subcontractor's Allowable Construction Cost, plus three percent (3%) of any sum in excess of One Hundred Thousand Dollars (\$100,000) of the Tier 2 Subcontractor's Allowable Construction Cost. To the extent any contingency or change order Work is performed by Subcontractors, for the benefit of the Design-Builder add three percent (3%) for the Design-Builder's Fee.

Example C1 (Tier 2 Subcontractor-Performed Contingency Work or Change Order Work):

Tier 2 Subcontractor Allowable Construction Cost	\$200,000
20% Tier 2 Subcontractor overhead and profit	<u>\$40,000</u>
Tier 2 Subcontractor Total	\$240,000
10% Tier 1 Subcontractor overhead and profit on first \$10,000 of Tier 2 Subcontractor Allowable Construction Cost	\$1,000
5% on next Tier 2 Subcontractor \$90,000 Allowable Construction Cost	\$4,500
3% on Tier 2 Subcontractor Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Total for Subcontractors	\$248,500
3% Design-Builder's Fee	<u>\$7,455</u>
Total	\$255,955

- See Example D1, D2, and D3 for overhead and profit on major equipment such as: switchgear, transformers, air handling units, boilers, etc. For extra equipment purchases by the Design-Builder or Tier 1 Subcontractor or Tier 2 Subcontractor; add to the Allowable Construction Cost for the benefit of the Design-Builder or Tier 1 Subcontractor a sum equal to ten percent (10%) of the first Ten Thousand dollars (\$10,000) of the vendor's Allowable Construction Cost plus five percent (5%) of the next Ninety Thousand dollars (\$90,000) of the vendor's Allowable Construction Cost, plus three percent (3%) of any sum in excess of One Hundred Thousand dollars (\$100,000) of the vendor's Allowable Construction Cost. If the equipment is supplied by the Tier 2 Subcontractor, then the Tier 1 Subcontractor is entitled to a maximum of ten percent (10%) of the first Ten Thousand dollars (\$10,000) of the Allowable Construction Cost. To the extent any Contingency or Change Order Work is performed by Subcontractors, for the benefit of the Design-Builder add three percent (3%) for the Design-Builder's Fee.

Example D1 (Design-Builder-Purchased Major Equipment Contingency or Change Order Work):

Vendor Allowable Construction Cost	\$200,000
10% Design-Builder overhead and profit on first \$10,000 Allowable Construction Cost	\$1,000
5% on next \$90,000 Vendor Allowable Construction Cost	\$4,500
3% on Vendor Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Total	\$208,500

Example D2 (Tier 1 Subcontractor-Purchased Major Equipment):

Vendor Allowable Construction Cost	\$200,000
10% Tier 1 Subcontractor overhead and profit on first \$10,000 Allowable Construction Cost	\$1,000
5% on next \$90,000 Vendor Allowable Construction Cost	\$4,500
3% on Vendor Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Total for Subcontractor	\$208,500

3% Design-Builder's Fee	<u>\$6,255</u>
Total	\$214,755

Example D3 (Tier 2 Subcontractor-Purchased Major Equipment):

Vendor Allowable Construction Cost	\$200,000
10% Tier 2 Subcontractor overhead and profit on first \$10,000 Allowable Construction Cost	\$1,000
5% on next \$90,000 Vendor Allowable Construction Cost	\$4,500
3% on Vendor Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Tier 2 Subcontractor Total	\$208,500
10% Tier 1 overhead and profit on first \$10,000 Vendor Allowable Construction Cost when equipment is supplied by a Tier 2 Subcontractor, no other mark-up is allowed	<u>\$1,000</u>
Total for Subcontractors	\$209,500

3% Design-Builder's Fee	<u>\$6,285</u>
Total	\$215,785

- See Example E1, E2, and E3 for overhead and profit on a material only contingency or change in the Work. For increased material purchases by the Design-Builder or Tier 1 Subcontractors; add to the Allowable Construction Cost for the benefit of the Design-Builder or Tier 1 Subcontractor a sum equal to ten percent (10%) of the first Ten Thousand dollars (\$10,000) of the supplier's cost, plus five percent (5%) of the next Ninety Thousand dollars (\$90,000) of the supplier's cost, plus three percent (3%) of any sum in excess of One Hundred Thousand dollars (\$100,000) of the supplier's cost. If the material is supplied by the Tier 2 Subcontractor, the Tier 1 Subcontractor is entitled to a maximum of ten (10) percent of the first Ten Thousand dollars (\$10,000) of the Allowable Construction Cost. If the Contingency or Change Order Work is performed by Subcontractors, for the benefit of the Design-Builder add three percent (3%) for the Design-Builder's Fee.

Example E1 (Design-Builder Purchased Additional Material Contingency or Change Order Work):

Material cost (net difference between original contract and revised)	\$200,000
10% Design-Builder overhead and profit on first \$10,000 Allowable Construction Cost	\$1,000
5% on next \$90,000 Allowable Construction Cost	\$4,500
3% on Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Total	\$208,500

Example E2 (additional material purchased by a Tier 1 Subcontractor)

Material cost (net difference between original contract and revised)	\$200,000
10% Tier 1 Subcontractors overhead and profit on first \$10,000 Allowable Construction Cost	\$1,000
5% on next \$90,000 Allowable Construction Cost	\$4,500
3% on Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Total for Subcontractor	\$208,500
3% Design-Builder's Fee	<u>\$6,255</u>
Total	\$214,755

Example E3 (additional material purchased by a Tier 2 Subcontractor):

Material cost (net difference between original contract and revised)	\$200,000
10% Tier 1 Subcontractors overhead and profit on first \$10,000 Tier 2 Subcontractor's Allowable Construction Cost	\$1,000
5% on next \$90,000 Tier 2 Subcontractor's Allowable Construction Cost	\$4,500
3% on Tier 2 Subcontractor's Allowable Construction Cost over \$100,000	<u>\$3,000</u>
Tier 2 Subcontractor Total	\$208,500
10% Tier 1 overhead and profit on first \$10,000 Allowable Construction Cost when materials are supplied by a Tier 2 Subcontractor, no other mark-up is allowed	<u>\$1,000</u>
Total for Subcontractors	\$209,500
3% Design-Builder's Fee	<u>\$6,285</u>
Total	\$215,785

B. Should a change in the Work or a Design-Builder Contingency expenditure require the use of extra design professional services from Design-Builder's Design Professional or its design subconsultants' employees trained in areas of design-related technical competence, such as architecture, engineering, drafting, surveying, and related specialties, but does not include clerical or administrative support ("**Technical Employees**"), beyond what was originally contracted for in the Design Professional's (Tier 1 Subcontractor) Subcontract with the Design Builder, payment shall be as determined below: .

1. Direct salaries of Technical Employees employed by the Tier 1 Subcontractor on the Project on a time and hourly rate basis using actual rates of pay of the applicable Technical Employee, not to exceed those set forth in Exhibit P, times the Tier 1 Subcontractor agreed-upon multiplier set forth in the same Exhibit.
2. Direct salaries of Technical Employees employed by Tier 2 Subcontractor(s), if any, on a time and hourly rate basis using actual rates of pay of the employees, not to exceed those set forth in Exhibit P, times the Tier 2 Subcontractor's agreed-upon multiplier set forth in the same Exhibit, plus a mark-up paid to the Tier 1 Subcontractor at a maximum of ten (10%) percent of actual direct salary costs of the Tier 2 Subcontractor. The mark-up compensates the Tier 1 Subcontractor for the administration and coordination of providing subconsultant services.
3. Design-Builder is entitled to its Design-Builder's Fee of %, which will be applied only to Subcontractor-performed professional services that change the GMP. Design-Builder shall not be entitled to a Design-Builder's Fee for extra professional services that are part of contingency Work.
4. Specific Owner-approved reimbursable expenses.

C. Other than the overhead and profit described in General Conditions Section 7.02 (A), no further overhead and profit will be allowed for changes to the Work performed by a Subcontractor under Subcontract with the Design-Builder or for major equipment or material supplier determined to be an affiliate of or controlled by the Design-Builder. An affiliate is considered any firm or entity in which the Design-Builder or any individual listed on the Design-Builder's NYS Vendor Responsibility Questionnaire either owns 5% or more of the shares of, or is one of the five largest shareholders, a director, officer, member, partner or proprietor of said Subcontractor, major equipment or material supplier; a controlled firm is any firm or entity which, in the opinion of the Owner, is controlled by the Design-Builder or any individual listed on the Design-Builder's NYS Vendor Responsibility Questionnaire.

1. The Owner will determine if a firm or entity is an affiliate of or controlled by the Design-Builder.

D. No overhead and profit shall be paid for changes in the Work performed by a Subcontractor not under Subcontract with the Design-Builder or Tier 1 Subcontractor. No overhead and profit shall be paid on the premium portion of overtime pay. Where the changes in the Work involve both an increase and a reduction in similar or related Work, the overhead, fee allowance, and profit allowance shall be applied only to the cost of the increase that exceeds the cost of the reduction.

Section 7.03 - Deductive Change Order.

The Owner, at any time and for any reason, may notify the Design-Builder, that the Owner will have the Work of the Contract or any part thereof, performed by Owner or others, without terminating the Contract or prejudice to any other right the Owner may have. The Owner may recover any and all costs related to such Work and deduct the value of such Work from the GMP. The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change which results in a decrease in the Contract amount shall be as determined by the Owner. The credit shall include the overhead and profit allocable to the deleted or changed Work unless the Owner determines otherwise.

Section 7.04 - Not Used.

Section 7.05 - Continued Execution of the Work.

Unless otherwise directed in writing by the Owner, at all times during the course of any performance of the Work, including, but not limited to, Forced Change Order Work, Change Order negotiations, reviews of Claims, or legal proceeding, the Design-Builder shall continue with the performance of its Contract obligations in a diligent manner and in

accordance with the applicable provisions of the Contract Documents. Records of the Contract obligations performed during such time shall be kept in accordance with the applicable provisions of this Contract.

Section 7.06 - Concurrent Delays.

If the Critical Path of Design-Builder's Work has been delayed and a separate delay also arises for all or a portion of the same period of time for which Design-Builder is not entitled to additional time (the "**Concurrent Delay**"), then the extension of time that Design-Builder would otherwise be entitled to as a result of the Critical Path Delay shall be reduced by the number of Days that the Concurrent Delay exists during such delay.

Section 7.07 - Owner's Construction Durations.

Owner shall be entitled to the construction durations allotted in the Baseline Schedule for Owner and Owner's Separate Contractors to complete portions of the Work. If Owner or its Owner's Separate Contractors start that work on time and do not take longer than the allotted durations for such work, then Design-Builder shall not be entitled to an extension of the Milestone Dates.

ARTICLE 8 - PAYMENT

Section 8.01 - Provision for Payment.

A. The Design-Builder shall complete and submit to the Owner for review and written approval, the detailed Schedule of Values prior to the Design-Builder's first billing request. It is understood, and the Design-Builder acknowledges, that the Schedule of Values is an administrative tool to illustrate a format and minimum level of detail required for billing requests, and shall not be considered as delineating the Design-Builder's scope of Work. The Owner may require the Design-Builder to revise its Schedule of Values at no cost to the Owner and to provide a greater level of detail. Further, the Owner reserves the right to accept only those cost distributions which, in the Owner's opinion, are reasonable, equitably balanced and correspond to the estimated quantities in or for the Contract Documents. Owner's approval of the Schedule of Values can be provided only by an authorized officer of Owner or authorized employee of Owner's Project Controls Unit.

B. The Design-Builder, at its own expense, shall take all actions necessary to fully comply with the requirements of the Statewide Utilization Management Plan ("**SUMP**") of the NYS Contract System. Design-Builder shall require all Subcontractors to comply with the requirements of SUMP and the NYS Contract System. These requirements include, but are not limited to, the Design-Builder's timely payment to all Subcontractors and timely input in to the NYS Contract System of information, including but not limited to, information regarding Subcontractor payments and compliance with Contract requirements, including but not limited to Contract requirements for participation of Minority and Women Owned Business Enterprises in the performance of the Contract.

- C.** The Owner shall not approve any billing request until:
1. the Design-Builder is in full compliance with SUMP and the NYS Contract System;
 2. the Owner approves the Schedule of Values in writing; and
 3. Design-Builder has submitted all required documentation required for payment.

D. To request a partial or full payment for partial or full performance of the Contract, Design-Builder shall obtain from the Owner a Design-Builder's billing request. The Design-Builder shall complete the billing request by entering in each line item thereof the then-current percentage of completion of that item as of the end of the preceding business month and deliver the completed billing request to the Owner. The Owner shall review the billing request and make any changes which the Owner determines to be necessary so that the percentage of completion for each line item in the billing request accurately reflects the Design-Builder's performance of the Contract as of the end of the preceding business month. The Owner then delivers the Owner's adjusted version of the billing request to the Design-Builder for execution by the Design-Builder of the certifications of the Design-Builder required for partial or full payment for partial or full performance of the Contract. The Design-Builder delivers the executed billing request to the Owner. Any partial payment request under the Contract shall be

at least thirty (30) Days after the preceding partial payment request under the Contract, unless the Owner in writing signed by an authorized officer permits more frequent requests.

E. The Owner may make a partial payment to the Design-Builder for partial performance of the Contract on the basis of an Application for Payment for the Work performed during the preceding business month. The Owner shall retain five percent (5%) of the amount of each said Application for Payment. The Owner may make full payment to the Design-Builder for full performance of the Contract on the basis of an Application for Payment. Each Application for Payment shall be accompanied by all documentation required by Law and the Contract Documents, including but not limited to, certified payrolls and all documentation required by the Owner, including but not limited to documentation to establish compliance with NYS Labor Law and NYS Lien Law. The Owner may require any documentation the Owner determines is necessary or useful to establish that the Design-Builder's performance of the Work complies with the requirements of the Contract and applicable Law.

F. Any partial payment made shall not be construed as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract. No payment, either partial or full, by the Owner to the Design-Builder shall waive or excuse any failure by the Design-Builder to comply fully with the Contract Documents. No payment will be made for Work not performed.

G. In preparing the Design-Builder's billing request, material delivered to the Site and properly stored and secured at the Site and material approved to be stored off-site under such conditions as the Owner shall prescribe in accordance with this General Conditions, Section 8.01 (H), may be taken in to consideration. All costs related to the storage of materials are the sole responsibility of the Design-Builder.

H. The Owner will provide an agreement for materials stored off-site and specific forms that the Design-Builder shall complete, execute, and submit with any billing request for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases of liens, and inventory. The Owner may require the Design-Builder to certify in the agreement for materials stored off-site that the materials comply with one or more requirements of the Contract or to provide documentary proof acceptable to the Owner that the materials comply with one or more requirements of the Contract.

I. All monthly billing requests submitted by the Design-Builder shall only be in the form and manner approved by the Owner. The Design-Builder shall furnish such affidavits, vouchers, receipts, and other documentation as to delivery and payment for materials, payment of Subcontractors, and payment of prevailing rate of wage and supplements required by NYS Labor Law as the Owner requires to substantiate each and every billing request. Design-Builder shall furnish any other documentation required by Owner to establish compliance with one or more requirements of the Contract or any statute or regulation, including but not limited to the certification required by General Conditions, Section 16.02 and proof of compliance with NYS Labor Law Section 220 (See General Conditions, Section 16.04 (H)).

J. Design-Builder shall also supply the following:

1. Design-Builder's original Sworn Statement in the form attached to Exhibit M;
2. Design-Builder's original, unconditional partial Mechanics Lien Waiver for the total amount of costs and fees paid from a previous invoice, on the form attached to Exhibit M;
3. Each Major Subcontractors' (of every tier) original, unconditional partial Lien Waivers for the amount paid from previous invoice, on the form attached to Exhibit M;
4. Each Major Subcontractors' (of every tier) Sworn Statements in the form attached to Exhibit M;
5. An accounting of any Work performed by any Subcontractor (of any tier) for which no payment has been made and the reasons for such non-payment; and

K. A signed certificate from the Design-Builder stating that all Work has been performed pursuant to and in conformance with the Contract Documents and no unauthorized substitutions have been made.

L. All payments received by the Design-Builder under or in connection with the Contract are trust funds under Article 3-A of the NYS Lien Law and shall be applied by the Design-Builder in accordance with such Law.

M. For the purposes of controlling cash flow, to the extent Design-Builder completes an Activity earlier than scheduled on the Schedule of Values or the Project Schedule, Design-Builder may invoice for that completed Work; provided, however, Design-Builder may not invoice for an early-completed Activity more than two months in advance of when that specific Activity was originally scheduled to be completed. Under no circumstances may the cumulative monthly Application for Payment as invoiced by Design-Builder exceed the cumulative projected cash flow established for the following month.

Section 8.02 - Certification by Design-Builder.

In each Application for Payment, Design-Builder shall certify that such Application for Payment represents the amount to which Design-Builder is entitled pursuant to the terms of this Contract and shall also certify as follows:

There are no known Liens outstanding at the date of this Application for Payment, all undisputed amounts which are due and payable to any third party (including Subcontractors) with respect to the Work as of the date of this Application for Payment have been paid or are included in the amount requested in the current application, and, except for such bills not paid but so included, and except for amounts disputed between Owner and Design-Builder in accordance with the Contract Documents between Owner and Design-Builder, there is no known basis for the filing of any Liens on the Facility or any contract funds, except in respect of payments to Subcontractors withheld for proper reasons or disputed, and that lien releases or waivers from all Subcontractors required pursuant to General Conditions, Section 8.03 of the Contract have been obtained in such form as to constitute an effective release of lien under the Laws of the State of New York.

Section 8.03 - Lien Waivers.

A. In the form attached hereto as Contract, Exhibit M, Design-Builder shall furnish at its sole cost and expense, and shall obtain from each Major Subcontractor, an unconditional partial lien waiver and release of all Liens in the amount of payments received to date (for the benefit of Owner), for delivery to Owner with each Application for Payment, or such other documents necessary to ensure an effective release of all Liens with respect to the Work in compliance with the Laws of the State of New York; provided that Design-Builder shall not be obligated to obtain partial Lien waivers or releases from any other Subcontractor who is not a Major Subcontractor. Except as contemplated in the preceding sentence, Owner's receipt of Lien waivers and releases for each portion of the Work covered by the Application for Payment shall be a condition precedent to Owner's obligation to pay for such portion of the Work covered in any Application for Payment. Design-Builder shall also furnish, at its sole cost and expense, a waiver and release of all Liens upon Final Payment, substantially in the form of Exhibit M, from each Subcontractor, including Major Subcontractors, upon completion of the Work to be performed by such Subcontractors and Major Subcontractors, or such other documents necessary to ensure an effective release of Liens with respect to the Site, in compliance with the Laws of the State of New York.

B. Design-Builder shall place no Lien and shall not permit a Lien to be placed by Design-Builder's Subcontractors or their employees 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 Design-Builder shall use its best efforts to prevent the placement of any liens on any Owner funds, real estate, property, or improvements by Design-Builder's Subcontractors or their employees. Should Owner receive Notice of intent to file a Lien from any of Design-Builder's Subcontractors, agents, or employees, Owner will notify Design-Builder. Upon receipt of Notice from Owner of the intent of one of Design-Builder's Subcontractors or their employees, to file a Lien, Design-Builder shall immediately take any and all steps necessary, including paying an amount in dispute to the party intending to file such Lien, to prevent the filing of such Lien or to bond against such Lien.

C. Upon the Owner's receipt of a notice of public improvement lien, all or a portion of the amounts due in the current and subsequent payments due the Design-Builder shall be withheld until a sum which shall be one and one-half (1 1/2) times

the amount stated to be due in the notice of public improvement lien shall have been withheld from payments due the Design-Builder. This sum shall be withheld until the lien is discharged. The Design-Builder shall promptly discharge any notice of public improvement lien by filing a bond pursuant to NYS Lien Law Section 21, subdivision 5. If any Subcontractor should file a notice of lien against the property upon which the Project is located, such lien is void and Design-Builder, at its expense shall obtain and file an order of the Supreme Court of the State of New York cancelling such lien. If Design-Builder shall fail to obtain such order or if Design-Builder shall file a notice of lien against the property upon which the Project is located, the Owner may obtain an order of the Supreme Court of the State of New York cancelling such lien and deduct the attorney's fees and other costs incurred in obtaining and filing such order from any amount due the Design-Builder.

D. Upon receipt of any other lien, levy, notice to withhold, restraining notice, court or administrative order or any other instrument allowed by Law and directing the Owner to withhold payments due Design-Builder, the Owner will withhold the sum which Owner determines is necessary to withhold to comply with the applicable Law. This sum shall be withheld until the instrument is appropriately satisfied or discharged.

E. If Design-Builder fails to prevent the filing of such Lien or fails to bond against such Lien, Design-Builder 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 directly from the placement of such Lien. The obligations and liabilities of Design-Builder under this Article shall not apply where the basis for such Lien relates to amounts invoiced by Design-Builder that are either not paid or disputed by Owner. Notwithstanding any contrary provisions of this Contract, the foregoing liabilities of Design-Builder for the wrongful placement of a Lien shall include consequential, indirect, and incidental damages.

Section 8.04 - Substantial Completion and Reduction of Retainage.

A. After the Owner has determined Substantial Completion of the Work, as evidenced by the executed Notice of Substantial Completion, the Owner shall pay to the Design-Builder the balance due the Design-Builder pursuant to the Contract less:

1. Two (2) times the value of any remaining items of Work to be completed or corrected as determined in accordance with General Conditions, Section 8.04 (B).
2. An amount necessary to satisfy any and all claims, liens, or judgments by the Owner or third parties against the Design-Builder.

B. After the Owner has determined Substantial Completion of the Work, as evidenced by the executed Notice of Substantial Completion, the Design-Builder shall submit to the Owner, for Owner's written approval, a detailed estimate of the value of the known remaining items of Work as set forth by the Owner and a schedule for achieving Final Completion of the Work. The Owner shall review that estimate and schedule and:

1. Direct the Design-Builder to revise and resubmit the estimate, the schedule or both; or
2. Approve the estimate and schedule.

C. The Owner, at its discretion, may value the items of Work to be completed or corrected assuming such items will be completed or corrected by an entity other than the Design-Builder and may include the cost of obtaining regulatory or other third-party approval of one or more items of Work.

D. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to a duly completed and submitted Application for Payment.

E. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until Completion and Acceptance by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to this General Conditions, Section 8.04.

F. The Design-Builder may request from the Owner a reduction of retainage when a phase of the Work is accepted by the Owner but Owner is not obligated to grant such request.

G. The Application for Payment for the first payment of reduction of retainage shall be accompanied by:

1. A release by the Design-Builder to the Owner of all Claims by and all liability to the Design-Builder for all items in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work; or
2. A release by the Design-Builder to the Owner of all Claims by and all liability to the Design-Builder for all items in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work, excepting and reserving to the Design-Builder those Claims specified by the Design-Builder in the release. Owner's acceptance of a release containing Claims specified by and reserved to the Design-Builder does not waive any rights of the Owner arising under the Contract or any other source with respect to such Claims.

H. The requirement of a release may be waived only in writing and only by the Owner's Office of Counsel. No payment, final or otherwise, shall operate to release the Design-Builder or the Design-Builder's sureties from any obligations under this Contract or the Performance or Payment bonds.

Section 8.05 - Not Used.

Section 8.06 - Withholding of Payments.

A. In addition to any amounts otherwise permitted to be withheld under this Contract, Owner, without limitation of any other rights or remedies contained in this Contract, may after providing Notice to Design-Builder, and Design-Builder has failed or refused to remedy such condition, Owner may withhold payment, in whole or in part, on one or more Applications for Payment until such time as Design-Builder has remedied or compensated Owner for its Losses related to one or more of the following:

1. Third-party claims made, or filed against Owner on account of Design-Builder or any Subcontractor;
2. Damage to Owner's property arising from Defective Work not remedied, the performance of the Work, or failure to perform the Work properly;
3. Breach by Design-Builder of any of its material obligations under the Contract Documents, including the reasonable direct costs to Owner of remedying the breach (plus Owner's Administrative Fee in the event that Design-Builder refuses, after written notice, to remedy the breach, and Owner' self-performs or hires a third party to do so) and all other reasonable direct costs directly attributable to other services that are required to be performed in connection with remedying such;
4. Defective Work not remedied, such that the Work has been performed, but which Owner, Design-Builder, or any inspector having jurisdiction thereof will not certify as being completed according to the Contract Documents, including the Drawings and Technical Specifications to satisfy the corresponding Schedule of Values line item;
5. Design-Builder's failure to properly pay Subcontractors;
6. Lien Claims or potential Lien Claims, or labor wages and/or benefit claims not resolved by Design-Builder per the terms of this Contract;
7. Unsubstantiated or unsupported amounts billed by Design-Builder, including the failure to provide the required supporting documentation as required by this Article;

8. Design-Builder's failure to achieve any Milestone Date in Exhibit D, Design-Builder's failure to provide required recovery plans, reports and updates as set forth in, or reasonably inferable from the Contract Documents, and/or Design-Builder's failure to accelerate its Work, as required by General Requirements, Section 013200 2.1 (H), to meet the Milestone Dates in Exhibit D and maintain the Project Schedule;
9. To protect the Owner, Client, or Owner's Separate Contractors from loss due to failure to defend, loss due to injury to persons or damage to the Work or property of Owner's Separate Contractors or others caused by the act or neglect of the Design-Builder or Subcontractors;
10. To protect the Owner and Client from damage caused or claimed to have been caused directly or indirectly by the failure of the Design-Builder to perform the Work of the Contract in strict accordance with the Contract Documents.
11. Any amounts due to Owner under the terms of this Contract;
12. To ensure payment of fines and penalties, that may be imposed on the Design-Builder pursuant to the provisions of the Contract.
13. To ensure payment of fines and penalties that may be imposed on the Design-Builder pursuant to General Conditions, Article 20 - Opportunity Programs. The estimated amount of said fines and penalties shall be the difference between the planned dollar amount of M/WBE subcontract awards and the actual dollar amount of such awards;
14. To protect and make whole the Owner from a contractor's non-compliance to the requirements set forth in General Conditions Article 14 - Protection of Persons and Property and General Conditions, Article 15 - Insurance and Bonds;
15. Failure to timely produce an agreed to Baseline Schedule; or
16. To ensure payment of just claims of any natural person or entity supplying labor, materials, or equipment for the Work.

B. The Owner shall have the right to apply any such amounts so withheld in such a manner as the Owner may deem proper to satisfy said claims, fines, and penalties, or to secure said protection. Said application of the money shall be deemed payments for the account of the Design-Builder.

Section 8.07 - Final Payment.

A. Upon satisfactory completion by the Design-Builder 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 Design-Builder, subject to the provisions of the Contract Documents allowing Owner to withhold payment to Design-Builder. Design-Builder shall submit a final Application for Payment for the portion of the GMP not previously paid at Final Completion. Such final Application for Payment shall include the following:

1. All documents required to be submitted with an Application for Payment under the Contract Documents;
2. Design-Builder's original, unconditional Final Mechanics Lien waiver in the form set forth in Contract, Exhibit M;
3. Each Subcontractors original, Final Mechanics Lien waivers for the total amounts of their contracts, plus any extra work, in the form set forth in Exhibit M; and
4. A request for a Certificate of Final Completion.

B. The making of Final Payment shall not constitute a waiver of any claims by Owner arising from:

1. Unsettled Liens; or
2. The terms of any warranties, including faulty or Defective Work or failure of the Work to comply with the requirements of the Contract Documents.

C. Acceptance by the Design-Builder of Final Payment hereunder shall operate as, and shall be, a release to the Owner from all Losses, claims and liability to the Design-Builder 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 Design-Builder from any obligations under this Contract.

Section 8.08 - Release and Consent of Surety.

Notwithstanding any other provision of the Contract Documents to the contrary, reduction of retainage and/or the final Application for Payment shall not become due until the Design-Builder submits to the Owner a General Release from the Design-Builder and, if the Owner requests, a Consent of Surety to said payment in form and content acceptable to the Owner. No payment, final or otherwise, shall operate to release the Design-Builder or the Design-Builder's sureties from any obligations under this Contract or the Performance or Payment bonds.

Section 8.09 - Late Payment.

Timeliness of payment and any interest to be paid to the Design-Builder for late payment is governed by Section 2880 of the NYS Public Authorities Law. Timely payment by the Design-Builder to the Subcontractor is governed by Section 139-f of the NYS State Finance Law which requires payment by the Design-Builder to the Subcontractor within seven (7) Days of receipt of payment from the Owner.

Section 8.10 - False Representations/Information.

A. False Representations, information, or data submitted on or with Applications for Payment may result in one or more of the following actions:

1. Termination of the Contract for cause;
2. Disapproval of future bids or contracts or subcontracts;
3. Withholding of any payment on the Contract; and
4. Civil and/or criminal prosecution (See General Conditions, Sections 7.01 (G) and 10.03 (F)).

ARTICLE 9 - TIME OF COMPLETION

Section 9.01 - Substantial Completion.

A. The Design-Builder shall commence performance of the Work at the time stated in the Notice to Proceed and the Design-Builder shall achieve the Milestone Dates, including the date of Substantial Completion, no later than the dates identified in Exhibit D. Notwithstanding anything to the contrary, a schedule submitted by the Design-Builder showing any of the Milestone Dates, including Substantial Completion, earlier than that specified in the Contract shall not entitle the Design-Builder to any additional cost in the event the earlier date is not realized.

B. It is hereby understood and mutually agreed, by and between the Design-Builder and the Owner that completing the Work on or before each of the Milestone Dates, including the date of Substantial Completion, is a material condition of the Contract.

C. The Design-Builder agrees that the Work shall be prosecuted regularly, diligently, and cooperatively with Owner's Separate Contractors and Other Owner Authorized Parties at such rate of progress as shall ensure that Contractor meets all

of the Milestone Dates within the time specified. It is expressly understood and agreed, by and between the Design-Builder and the Owner, that the time to achieve Substantial Completion allowed herein is reasonable.

D. It is further agreed that time is of the essence for completion of the Work on or before the Milestone Dates, including Substantial Completion, set forth in Exhibit D. In any instance in which additional time is allowed for any Milestone Date, the new Milestone Date established by said extension shall be of the essence. The Design-Builder shall not be charged with liquidated damages, acceleration costs from the Design-Builder's contingency or any excess cost of the Owner or Client if the Owner determines that the Design-Builder is without fault and that the delay in achieving the Milestone Dates, including Substantial Completion is due:

1. To any preference, priority or allocation order duly issued by the Government of the United States or the State of New York.
2. To an unforeseeable cause beyond the control and without the fault of, or negligence of the Design-Builder, and approved by the Owner, including, but not limited to, acts of God or of public enemy, acts of the Owner, fires, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather.
3. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in General Conditions, Section 9.01 (D) (1) and (2) of this Section or 10.04 A provided the Design-Builder shall, within fifteen (15) Days from the beginning of any such delay, notify the Owner in writing of the causes of the delay. Notice shall be delivered to the Owner in accordance with General Conditions, Article 10.

E. The Milestone Dates, including the date of Substantial Completion, may be modified only by a Change Order.

F. If the Contractor shall neglect, fail, or refuse to achieve Substantial Completion by the date specified in Exhibit D, or any proper extension thereof granted by the Owner, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in General Conditions, Section 9.02 (B) (2), not as a penalty, but as liquidated damages, for each and every Day thereafter that the Contractor does not achieve Substantial Completion.

G. If the Contractor shall abandon performance of the Work before achieving Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every Day after the date specified for Substantial Completion that the Work has not achieved Substantial Completion regardless of the Party responsible for completing the Work after such abandonment under General Conditions, Section 11.01. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.

H. If the Owner terminates the Contract for cause under Section 11.01 before the Contractor achieves Substantial Completion, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every Day after the date specified for Substantial Completion that the Work has not achieved Substantial Completion regardless of the Party responsible for completing the Work after such termination under General Conditions, Section 11.01. The obligation of the Contractor to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract pursuant to General Conditions Section 11.01.

I. Not Used

J. The Owner will issue the Notice of Substantial Completion after the Owner has determined that Substantial Completion of the Work has occurred.

K. Liquidated Damages Reasonable. Design-Builder's failure to comply with certain provisions of this Contract identified in this Article will result in Owner incurring substantial damages in amounts difficult or impossible to quantify with certainty. It is contemplated by both Parties as of the Effective Date of this Contract that the liquidated damages specified herein represent reasonable compensation to Owner for the foreseeable damages from each of the potential events for which liquidated damages are provided and are not to be construed as a penalty. The amount of liquidated damages for delay to Substantial Completion as identified in General Conditions, Section 9.02 (B) (2) is agreed upon by and between the

Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the Owner would sustain for loss of beneficial use of the Work of the Contract in the event of delay in Substantial Completion of the Work, and said amount is agreed to be the amount of damages sustained by the Owner and said amount may be retained from time to time by the Owner.

L. No Proof of Actual Damages. Owner will not be required to prove that it has incurred actual damages in order to assess liquidated damages against Design-Builder. Design-Builder's obligation to pay liquidated damages to Owner shall not affect, waive, or otherwise modify Design-Builder's warranty obligations to Owner.

M. Liquidated Damages Exclusive Remedy. Payment of one type of liquidated damage for Design-Builder's failure to comply with a specified requirement shall not relieve Design-Builder of its liability to pay liquidated damages for Design-Builder's failure to comply with other specified requirements. In each case, such liquidated damages paid by Design-Builder shall be Owner's sole and exclusive remedy and Design-Builder's only obligation for Design-Builder's failure to comply with that particular specified requirement, except Owner's right of termination for material breach by Design-Builder pursuant to General Conditions, Section 11.01.

N. Preservation of Damages for Actual Loss. The liquidated damages set forth in this Article are intended to constitute the Owner's sole and exclusive remedy for the Design-Builder's failure to achieve the Substantial Completion set forth in Exhibit D. Liquidated damages are not intended to compensate the Owner for the Correction of Defects under Section 13.03 or for other damages not related to the Design-Builder's failure to achieve Substantial Completion. The provisions of this paragraph are for the exclusive use of the Owner, and shall not accrue to Owner's Separate Contractors or third parties.

O. Offset of Liquidated Damages. If Owner becomes entitled to the liquidated damages provided in this Article, Owner may, after written notice to Design-Builder, deduct the amount of such liquidated damages from any money due or which may become due Design-Builder under this Contract. Should any liquidated damage amounts be in excess of the remaining unpaid balance of this Contract, Design-Builder agrees to pay to Owner such amounts within thirty (30) Days after receipt of Owner's invoice.

P. As described in more detail in the following Subsections, Design-Builder shall pay to Owner the liquidated damages specified in the event that Design-Builder fails to achieve Substantial Completion set forth in Exhibit D.

Q. Owner's Fault. Subject to the other provisions of this Article, Design-Builder shall not be assessed liquidated damages described in General Conditions, Section 9.02 (B)(2) (Liquidated Damages for Failing to Meet Schedule Milestones) to the extent that the Work fails to achieve the Milestone Dates, including Substantial Completion as described in Section 9.02(B) as a result of one or more events that are not the fault of Design-Builder or its Subcontractors. Notwithstanding the foregoing, Owner reserves the right to assess liquidated damages as described herein for that portion of the delay caused by Design-Builder or its Subcontractors.

Section 9.02 - Owner's Rights and Liquidated Damages for Failing to Meet Schedule Milestones.

A. In the event that the Design-Builder does not achieve the completion of Foundations or Building Enclosures by the dates set forth in Exhibit D, the Owner may direct an acceleration of the Work under Section 2.2.1 and all costs related to the acceleration shall be paid out of the Design-Builder's contingency.

B. Substantial Completion. In the event that the Design-Builder does not achieve Substantial Completion for the Facility on or before the Guaranteed Substantial Completion Date in Exhibit D, Design-Builder shall accrue liquidated damages in the amounts set forth below. Notwithstanding anything contained in this Contract to the contrary including, without limitation, the assessment of liquidated damages, Design-Builder shall have an absolute and unconditional obligation to provide Work that meets the requirements needed to successfully achieve Substantial Completion of the Facility.

1. If Design-Builder is unable to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, Design-Builder shall pay to Owner as liquidated damages applicable to such failure as follows:

2. Beginning at 12:01 a.m. on the first Day following the Guaranteed Substantial Completion Date and continuing for each Day thereafter until such time as Design-Builder achieves Substantial Completion, Owner shall assess, and Design-Builder shall be liable for, delay liquidated damages as follows: .

\$20,000 per day for the first thirty (30) days of delay
\$30,000 per day for the next thirty (30) days of delay
\$40,000 per day until Substantial Completion is achieved

C. Work Scheduling. Upon achievement of Substantial Completion, Design-Builder shall be required to complete any and all remaining Work required to achieve Final Completion in a manner consistent with the operational requirements of the Facility as directed by Owner. Upon achievement of Substantial Completion, Design-Builder is not entitled to require Owner to take all or part the Facility out of service prior to the Final Completion Date. Accordingly, Design-Builder shall schedule and coordinate with Owner any Work required to achieve Final Completion to avoid any adverse impact on Owner's ability to operate the Facility. If the Facility or any portion thereof must be taken out of service due to Design-Builder's fault when it otherwise would have been in service, Owner must first agree to take the Facility out of service or to permit such Work to be performed.

Section 9.03 - Not Used.

Section 9.04 - Completion Process.

A. System Turnover Packages. Design-Builder shall develop subsystem and system turnover packages and turn over schedule to facilitate the sequential initial testing and operation of equipment groupings and systems and shall submit such turnover packages to Owner for review and approval. The individual components of equipment groups and systems will be identified in system turnover packages ("**System Turnover Packages**"). The Design-Builder shall finish the Work for each System Turnover Package(s) in a manner to support the overall sequence and schedule of testing and initial operation of subsystems and systems to allow timely turnover for extended operation. Design-Builder shall participate in meetings, walk downs, corrections, and Punchlist completion to support the Owner-established turnover for initial operation process.

B. Not Used.

C. Guaranteed Completion Dates. Design-Builder guarantees that, subject to extensions as specifically provided for herein, Substantial Completion shall occur on or before the Guaranteed Substantial Completion Date.

Section 9.05 - Creation of Punchlist.

A. As soon as Design-Builder believes the state of the Work warrants such action, Design-Builder will give a written Notice to Owner that Design-Builder is prepared to conduct a joint inspection of the applicable portion of the Work, including each System Turnover Package, to produce a proposed list of Punchlist items all in compliance with this Section and General Requirements, Section 017700 1.5 (B). Owner and Design-Builder will cooperate with each other in scheduling and conducting a joint inspection of the Work as soon as reasonably possible after Owner's receipt of such written Notice but, in any event, within three (3) Business Days of its receipt.

B. The list of Punchlist items will be prepared and joint inspections performed on a System Turnover Packages basis. Within three (3) Business Days of completion of any such joint inspection but, in any event, within seven (7) Days of the date of Design-Builder's written Notice to Owner of Design-Builder's readiness for a joint inspection referred to in the first sentence of this Section, Design-Builder shall prepare and deliver to Owner a written description of all Punchlist items which Design-Builder, in its best good faith judgment, believes have not been completed or require revision or correction to cause them to conform with the requirements of the Contract Documents. If Owner accepts such list as a complete list of the Punchlist items then known, it will so signify by causing Owner to sign a copy of such list marked "**accepted**" and return such copy to Design-Builder. If Owner does not accept such list, Owner shall, within five (5) Days, state its objections to such list and all of its proposed changes therein and additions thereto by written Notice to Design-Builder. Promptly after the giving of such Notice, Owner and Design-Builder shall cause their respective representatives to meet and cooperate and negotiate in good faith to arrive at an agreed list of Punchlist items and the appropriate dates for completion

of such items. Owner shall have the right to have its representatives and designees present during any such negotiations. Following such meeting, Design-Builder shall proceed in accordance with General Requirements, Section 017700 1.5 (C). This process shall be repeated until the Punchlist is completed. Owner shall have the right to supplement the Punchlist if additional items are discovered.

C. Promptly following Design-Builder's delivery of its proposed list of Punchlist items to Owner, Design-Builder shall commence and thereafter diligently pursue the completion of all Punchlist items, as well as any portion of the Work which Design-Builder, in its best good faith judgment, believes have not been completed or require revision or correction, to cause them to conform with the requirements of the Contract Documents. It is specifically understood and agreed that Owner's acceptance of, or contract on, a list of Punchlist items shall not alter or diminish either Design-Builder's obligation to complete all of the Work, or Owner's right to require Design-Builder's completion of the Work, in accordance with the Contract Documents. The list of remaining Work items may be expanded to include additional items of corrective or completion Work until final Contract Closeout by the Owner. Appropriate payments may be withheld to cover the value of these items pursuant to provisions of the Contract Documents, including General Conditions, Sections 9.07 (B) (6) and 9.08 (A) (11).

D. Contract Closeout Requirements. Design-Builder shall follow the Contract Closeout Requirements described in the Contract Documents, including General Requirements, Sections 017700, 017823, 017839, and 018113.

Section 9.06 - Not Used.

Section 9.07 - Substantial Completion of the Work.

A. Establishing Substantial Completion of the Work. When Design-Builder believes that it has achieved Substantial Completion, Design-Builder shall submit a written request to Owner for Owner to issue a Notice of Substantial Completion (the "**Notice of Substantial Completion**") in the form identified in Exhibit GG. Owner shall within fifteen (15) Business Days inspect the Work and after the completion of the inspection, either: (a) execute the Notice of Substantial Completion, in which case Substantial Completion shall be deemed effective as of the date of receipt of the Contractor's request for a Notice of Substantial Completion; or (b) if reasonable cause exists for doing so, notify Design-Builder in writing that Substantial Completion has not been achieved and stating in detail the reasons therefore. In the event that Owner fails to respond to Design-Builder's Notice of Substantial Completion within such fifteen (15) Business Day period, Substantial Completion shall be tolled for the period in excess of fifteen (15) Business Days for purposes of the assessment of liquidated damages until Owner responds to Design-Builder's request for a Notice of Substantial Completion. In the event that Owner determines that Substantial Completion has not been achieved, Design-Builder shall promptly take such actions or perform such services or work as will achieve Substantial Completion pursuant to this Section. Such procedure shall be repeated as necessary until Substantial Completion has been achieved.

B. Conditions Precedent to Substantial Completion. Substantial Completion shall be achieved on the date on which, except for minor items of Work that would not affect the performance or operation of the Work, all of the following conditions have been satisfied:

1. Not Used;
2. The Design-Builder has completed all of the Work described in the Drawings and Specifications;
3. The Design-Builder has submitted and the Owner has approved, a certification by the Design-Builder that construction of the Project is physically complete and all other construction Work pertaining to the Project, excepting the items on the Punchlist, is complete and in all respects is in compliance with the Contract;
4. The Design-Builder has submitted and the Owner has approved, a certification by the Design-Builder, along with all required test reports, that Reliability Demonstration Testing required to achieve Substantial Completion has been completed in accordance with the Reliability Demonstration Test Plan and the specific requirements set forth in the Contract;
5. All maintenance training required for the Owner to operate and maintain the Work has been performed;

6. The Design-Builder and the Owner have agreed in writing upon the Punchlist. For any outstanding Punchlist items that are on the Punchlist following Substantial Completion, Owner shall retain from Design-Builder's Retainage or other future amounts owed to Design-Builder under the Contract Documents, an amount equal to 200% of the estimated monetized value of each remaining Punchlist item (the "**Punchlist Reserve**"). As Design-Builder completes a Punchlist item and such Work is accepted by Owner, Owner will release the amount of money being withheld on account of such Punchlist item;
7. The Design-Builder has delivered to the Owner a copy of the then-current updated set of As-Built Drawings and Technical Specifications in electronic format;
8. The Design-Builder has delivered to the Owner all operation and maintenance manuals for the equipment and written certification from the equipment manufacturers that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers' recommendations and requirements;
9. The Design-Builder has completed all other obligations set forth in the Contract with respect to the achievement of Substantial Completion;
10. Not Used.;
11. The Design-Builder is authorized by all appropriate Governmental Agencies and utilities for beneficial use, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended;
12. The Design-Builder has designed, installed, tested, and completed the Integrated Workplace Management System;
13. The completion of all commissioning requirements in accordance with the Contract Documents, including General Requirements, Section 019113;
14. Owner's receipt and acceptance of all Subcontractor warranties, final manuals, and documents as required by the Contract Documents;
15. The Design-Builder has received a TAO Certificate for the Project;
16. Not Used;
17. The then-current As-Built Project Schedule has been transmitted to Owner;
18. Sustainable documentation has been submitted to Owner;
19. Permits, licenses, and certificates have been submitted to DANSY;
20. Solid and Hazardous Waste documentation has been submitted by Design-Builder and approved by Owner;
21. All spare parts and attic stock required by the Contract Documents have been delivered and are in storage at the Project or other area designated by the Owner;
22. The Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and the Owner has approved the Design-Builder's certification, which approval shall be effective as of the date of the Design-Builder's certification.

C. Notice of Substantial Completion. Owner shall execute the Notice of Substantial Completion in the form of Exhibit GG which document shall be dated as of the date that the last of the requirements set forth above have been completed.

Section 9.08 - Final Completion Criteria.

A. The Design-Builder shall achieve Final Completion within one hundred and twenty (120) Days following Substantial Completion. When Design-Builder believes that it has achieved Final Completion, Design-Builder shall submit a written request to Owner for Owner to issue a Certificate of Final Completion (the “**Certificate of Final Completion**”) in the form identified in Exhibit GG. Upon the satisfaction of all of the conditions set forth in this Section, Owner shall accept the Work by executing the Certificate of Final Completion. The date on which all of the following conditions are fully satisfied shall be the “**Final Completion Date.**” In order to achieve Final Completion, Design-Builder must meet all of the following conditions:

1. The Design-Builder has achieved Substantial Completion, and all requirements thereof remain satisfied;
2. All applicable construction Work (including the Punchlist items and all repairs identified during or required due to the performance of commissioning and the Reliability Demonstration Tests and all clean up and removal of construction materials, demolition debris and temporary facilities) is one hundred percent (100%) complete and in all respects is in compliance with the Contract;
3. The Design-Builder has received a Code Compliance Certificate for the Project ;
4. The Design-Builder shall have delivered to the Owner all construction Work deliverables required by the Contract;
5. The Design-Builder shall have delivered to the Owner a final and complete reproducible set of final As-Built Drawings, Technical Specifications, and Project Schedule;
6. Final cleaning;
7. The Design-Builder shall have provided a complete list of all mechanical, electrical, and instrumentation equipment incorporated into the Project and shall have submitted all Submittals, equipment data sheets in an electronic format acceptable to the Owner;
8. All Modeling in accordance with General Conditions, Section 4.26;
9. Owner shall have received copies of a final certificate of waivers and release of Lien rights from all Subcontractors that did not previously provide such a final Mechanics Lien waiver, or with respect to claims of less than Two Hundred and Fifty Thousand Dollars (\$250,000), Design-Builder shall have provided a bond in form and amount satisfactory to Owner in an amount sufficient to cover 150% of the potential Lien liability;
10. The Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and the Owner has approved the Design-Builder’s certification, which approval shall be effective as of the date of the Design-Builder’s certification;
11. Owner shall have executed the Certificate of Final Completion in Exhibit GG which certificate shall be dated as of the date that the last of the requirements set forth in clauses above have been completed. The Work shall be one hundred percent (100%) complete (which 100% completion shall be supported by a certificate from Design-Builder in the form of Exhibit GG), except for Punchlist items that Owner agrees can be deferred. For any outstanding Punchlist items that remain on the Punchlist following Final Completion, Owner shall retain from the Final Payment a Punchlist Reserve in an amount equal to 200% of the estimated monetized value of each remaining Punchlist item. As Design-Builder completes a Punchlist item and such Work is accepted by Owner, Owner will release the amount of money being withheld on account of such Punchlist item;
12. Owner’s receipt and acceptance of all Subcontractor warranties, final manuals, and documents as required by the Contract Documents;
13. All maintenance training required for the Work has been performed;

14. All Submittals including, but not limited to, detailed design calculations, design information, conformed to Construction Documents, and all lock-out, tag-out information, required to be delivered under the Contract Documents have been delivered to Owner;
15. All liquidated damages and other amounts for which Design-Builder is liable have been paid to Owner;
16. There shall exist no outstanding Design-Builder material breach;
17. Design-Builder shall have delivered to Owner the consent of the surety, if any, to release Final Payment; and
18. Intentionally Omitted.

ARTICLE 10 - CLAIMS

Section 10.01 - Claim for Extra Work.

A. If the Design-Builder claims that:

1. a decision of, or direction or response to the Design-Builder by, the Owner, Consultant, or Owner Representative;
2. a condition; or
3. any action or omission of the Owner

is contrary to the terms and provisions of the Contract and will require the Design-Builder to perform Extra Work, Design-Builder shall file a written notice of Claim in strict accordance with General Conditions Section 10.03. No Claim for Extra Work shall be allowed unless the Design-Builder files a written notice of Claim that complies strictly with the requirements of General Conditions Sections 10.01 and 10.03. The notice of Claim shall identify the decision, direction, response, action, omission, or condition from which the Claim arises. The Design-Builder shall also strictly comply with all other requirements of General Conditions Sections 10.01 and 10.03.

B. If the Owner determines the decision, response, direction, action, omission, or condition does not require the performance of Extra Work, the Owner shall issue a “**Disputed Work Directive**”. The Design-Builder, upon receipt of the Disputed Work Directive shall immediately and diligently proceed with the Work described in the Disputed Work Directive in accordance with all instructions of the Owner. Design-Builder’s failure to diligently and timely proceed in accordance with Owner’s direction in a Notice to Proceed or Change Order executed and delivered by the Owner to the Design-Builder shall be a material breach of the Contract if Design-Builder’s failure to diligently and timely proceed pursuant to Owner’s written direction to do so causes a delay to the Critical Path, unless the Owner in writing directs otherwise. Design-Builder’s performance of the Work described in and pursuant to the Disputed Work Directive shall not be a waiver of the Design-Builder’s Claim for Extra Work provided the Design-Builder strictly complies with all requirements of General Conditions Sections 10.01 and 10.03. The Owner may issue a Disputed Work Directive for a decision, response, direction, action, omission, or condition before the Design-Builder files a notice of Claim arising from such decision, response, direction, action, omission, or condition; if the Owner does so, the Design-Builder shall still file a notice of Claim in strict compliance with General Conditions Section 10.03 and shall strictly comply with all requirements of General Conditions Sections 10.01 and 10.03.

C. The Design-Builder's failure to comply strictly with any or all parts of General Conditions Sections 10.01 and 10.03 shall be deemed to be:

1. a conclusive and binding determination on the part of the Design-Builder that the decision, response, direction, action, omission, or condition does not involve Extra Work; and
2. a waiver by the Design-Builder of all Claims for additional compensation or damages as a result of the decision, response, direction, action, omission, or condition.

Section 10.02 - Claim for Additional Cost.

A. If the Design-Builder wishes to make a Claim for an increase in the GMP or a change to the Milestone Dates, including but not limited to a Claim alleging breach of the Contract by Owner, the Design-Builder shall file a written notice of Claim strictly in accordance with General Conditions Section 10.03. The notice of Claim shall identify the condition or event from which the Claim arises. No Claim for an increase in the cost to perform the Work of the Contract shall be allowed unless the Design-Builder files a notice of Claim that complies strictly with the requirements of General Conditions Section 10.02 and 10.03. Design-Builder shall also strictly comply with all other requirements of General Conditions Sections 10.02 and 10.03. The Owner shall determine the validity of the Design-Builder's contention. Pending the decision of the Owner, the Design-Builder shall proceed with the diligent and prompt performance of the Work. Denial of additional costs shall not entitle the Design-Builder to additional time to achieve Substantial Completion. Nothing in this paragraph waives any of Owner's rights under the Contract.

B. The Design-Builder's failure to comply strictly with any or all parts of General Conditions Sections 10.02 and 10.03 shall be deemed to be:

1. a conclusive and binding determination on the part of the Design-Builder that the event or condition does not increase the cost to perform the Work of the Contract; and
2. a waiver by the Design-Builder of all Claims for additional compensation or damages as a result of the event or condition.

Section 10.03 - Notice of Claim and Substantiation.

A. A written notice of Claim shall be delivered concurrently to the Owner's Representative and Project Controls Unit (as identified below) by the Design-Builder within fifteen (15) Days after occurrence of the event, decision, direction, response, action, or omission giving rise to such Claim or within fifteen (15) Days after the Design-Builder first recognizes the condition giving rise to the Claim, whichever is earlier. The burden of proving the Owner's receipt of the notice of Claim shall be the Design-Builder's responsibility. Design-Builder's failure to comply with the requirements of this Section 10.03 shall constitute a waiver of its Claim.

B. Within ninety (90) Days of the initial notice of Claim, the Design-Builder shall substantiate the Claim in writing and document the nature of the Claim and provide supporting cost data and documentation, Design-Builder's original cost estimate, Project CPM schedule fragment demonstrating the alleged impact of and correlation to the Claim subject matter and a Design-Builder affidavit stating the following:

"I hereby certify that the value assigned the work, labor, material and equipment that comprise the Claim, represents the actual value of said work, labor, material and equipment pursuant to the Contract between the undersigned and the Dormitory Authority."

1. The Design-Builder shall supplement its Claim submission with any additional claimed damages that arise out of the same event, decision, direction, response, action, or omission within thirty (30) Days of the date said additional damages are incurred for as long as such additional damages are incurred, which submission shall include a written statements of the details and the amounts of such damages, together with the affidavit and documentary evidence of such damages as required by Section 10.03 (B).

C. The Design-Builder shall provide the Owner's Representative one (1) paper copy of the documented Claim and affidavit and mail two (2) paper copies to:

Dormitory Authority
Project Controls Unit
515 Broadway
Albany, NY 12207-2964

D. The Owner, at any time after the Design-Builder files a notice of Claim, may request additional documentation to determine the validity of the Design-Builder's contention and the Design-Builder shall submit such additional documentation within the time period specified by the Owner in the Owner's request for additional documentation. The Owner, at any time after the Design-Builder files a notice of Claim, may request an electronic copy of the documented Claim and the Design-Builder shall submit such a copy within ten (10) Days.

E. The value of any Claim, if allowed, shall be determined by the methods described in General Conditions, Article 7 – Changes in the Work. No Claim shall be allowed unless and until a Change Order allowing the Claim is executed and delivered by the Owner to the Design-Builder; payment of an allowed Claim may be made only through an Application for Payment.

F. Any information representing the actual value of the labor performed, equipment utilized and material Furnished contained in the Claim that constitutes False Representation may subject the Design-Builder or Subcontractor to criminal and/or civil charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (Fraudulent and False Statements) and/or termination of the Contract for cause and civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.

Section 10.04 - Delays.

A. For the purposes of this Contract, the term delay includes, delay, disruption, interference, inefficiencies, impedance, hindrance and acceleration. The Design-Builder agrees to make claim only for Compensable Delay Costs, as defined below, for only the causes listed below, attributable to delay in the performance of this Contract, occasioned by any of the following acts or omissions of the Owner or any of its representatives:

1. Extended delays attributable to the Owner's review of submittals, RFI's and Design Packages for which timely written notice has been provided as required in the Contract under Articles 4 and 10, and which constitute a qualitative change to the project work and which have a verifiable impact on project.

2. The unavailability of the site for such an extended period of time which the Owner determines to significantly affect the scheduled completion of the Contract.

3. The issuance by the Owner of a stop work order relative to a substantial portion of work that is not attributable to an act or omission of the Design-Builder or anyone under its direction or control for a period exceeding thirty days.

B. The Design-Builder agrees that delay from any other cause shall be compensated for solely by an extension of time to complete the performance of the work.

C. The Design-Builder shall provide written notice of an anticipated compensable delay claim in accordance with this General Conditions, Article 10. The notice shall at a minimum provide a description of any operations that were, are being, or will be delayed, the date(s) and reasons for the delay. Design-Builder's failure to comply with the requirements of this Section shall constitute a waiver of its Claim.

D. Failure by the Design-Builder to adequately progress the completion of the work will be considered by the Owner in determining the causes of delay. For any claim asserted under this Article, the Design-Builder shall keep detailed written records of the costs and shall make them available to the Owner at any time for the purposes of audit and review. Failure by the Design-Builder to provide the required written notice or to maintain and furnish records of the costs of such claims to the Owner shall constitute a waiver of the claim.

E. Compensable Delay Costs shall include only the following:

- a. Increased wages attributable to work being performed by trades in a higher wage period.
- b. Increased field office expenses (including increased labor costs for on-site time-dependent personnel who would otherwise be considered indirect or overhead personnel).

- c. Increased cost to purchase materials.
- d. Increased cost to store materials, to the extent that the Design-Builder can demonstrate that such storage is specific to this Project.
- e. Costs incurred to keep the Work Site open, such as temporary power and sanitary facilities.
- f. Extended insurance and bonding.
- g. Increased costs of rented equipment.

Section 10.05 - Continuance of the Work.

Unless the Owner, in writing, permits otherwise, the Design-Builder shall proceed diligently and promptly with the performance of the Work while the Owner considers a notice of Claim filed pursuant to:

- A. General Conditions Sections 7.01 (F) and 10.03;
- B. General Conditions Sections 10.01 and 10.03; or
- C. General Conditions Sections 10.02 and 10.03;

or while the Owner considers a request for additional time to achieve Substantial Completion filed pursuant to General Conditions Sections 10.03 and 10.04 or while the Owner considers any other Claim.

Section 10.06 - Resolution of Claim.

A. Any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion shall be final, binding and conclusive on the Design-Builder unless within fifteen (15) Days after receiving notice of the Owner's resolution, the Design-Builder files a written notice with the Owner that the Design-Builder reserves the Design-Builder's rights under the Contract in connection with the matters covered by said resolution or determination. The written notice shall be filed in strict accordance with General Conditions, Article 10. The Design-Builder's failure to comply strictly with these requirements shall be deemed to be a waiver by the Design-Builder of all Claims for additional compensation or damages included in the Claim and the request for additional time to achieve Substantial Completion.

B. After any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion, the Design-Builder shall proceed diligently and promptly with the performance of the Work whether the Design-Builder files a written notice with the Owner that the Design-Builder reserves the Design-Builder's rights under the Contract in connection with the matters covered by said resolution or determination or the Design-Builder does not file such a written notice. Nothing in this paragraph waives any of the Owner's rights under the Contract.

C. Design-Builder shall file no action or proceeding in a court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion unless the Design-Builder shall have strictly complied with all the requirements relating to the giving of notice and of information with respect to such Claim or request for additional time to achieve Substantial Completion in this General Conditions Article 10. Nothing in this paragraph waives any of Owner's rights under the Contract.

D. Design-Builder shall file no action or proceeding in court challenging any resolution or determination by the Owner of a Claim or a request for additional time to achieve Substantial Completion until Design-Builder has achieved Substantial Completion of the Work. Design-Builder agrees that any court action or proceeding challenging any resolution or determination by the Owner of a Claim or a request for additional time filed before Design-Builder has achieved Substantial Completion of the Work is premature. Nothing in this paragraph waives any of Owner's rights under the Contract. The Owner, in its discretion, may modify this paragraph by a Contract Amendment.

E. At its discretion, the Owner may resolve any Claim or a request for additional time to achieve Substantial Completion without waiving its rights under the Contract.

ARTICLE 11 - TERMINATION OR SUSPENSION

Section 11.01 - Termination for Cause.

A. In the event that any provision of the Contract is violated by the Design-Builder or by any Subcontractor, the Owner may serve written notice upon the Design-Builder and upon the Design-Builder's surety, if any, of the Owner's intention to declare a Design-Builder Default (defined in the Performance Bond attached hereto as Exhibit Q) and terminate the Contract. Such notice shall contain the reasons for the intention to declare a Design-Builder Default and terminate the Contract. The Design-Builder will be allowed an opportunity to show why the Owner should not declare a Design-Builder Default and why the Design-Builder's Contract should not be terminated for cause. If the violation shall not cease or arrangements satisfactory to the Owner are not made, the Owner, in writing, may declare a Design-Builder Default and the Contract shall terminate upon the date specified by the Owner in the declaration of Design-Builder Default. The Owner shall send the Design-Builder and the Design-Builder's surety, if any, written notice of and a copy of the declaration of Design-Builder Default and termination of the Contract. In the event of a declaration of Design-Builder Default and termination of the Contract, the Owner has the remedies set forth in the Performance Bond, the Contract, and all remedies at law or in equity.

B. In the event of any such termination, the Owner may take over the Work and prosecute the Contract to completion and take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work. The Design-Builder and Design-Builder's surety shall be liable to the Owner for all costs incurred by the Owner. In the event that Owner terminates this Contract pursuant to General Conditions, Section 11.01, Owner shall have the right to take possession of any or all of Construction Aids owned by Design-Builder located at the Site for the purpose of completing the Work, with such Construction Aids to be returned to Design-Builder upon the completion of the Work.

C. Although Owner shall use reasonable efforts to mitigate the cost for completion of the Work, Owner may employ any Person, firm, or corporation to finish the Work by whatever method Owner may deem expedient and may undertake such expenditures as in Owner's sole judgment will best accomplish the timely completion of the Work (including, where necessary, the entry into agreements without prior solicitation of proposals). In such event, Design-Builder shall not be entitled to receive any further payments under this Contract except for payments for Work performed prior to such termination based on the Work completed according to the Schedule of Values, less amounts owed by Design-Builder to Owner under General Conditions, Section 11.01. The Design-Builder and Design-Builder's surety shall be liable to the Owner for all costs incurred by the Owner. All costs attributable to Design-Builder shall include Owner's Administrative Fee

D. If Owner elects to terminate this Contract pursuant to this Section 11.01, Design-Builder shall, at Owner's request and Design-Builder's expense, perform the following services relative to the Work so affected:

1. Assist Owner in preparing an inventory of all Materials in use or in storage at the Site;
2. Assign to Owner all Subcontracts and other contractual agreements as may be designated by Owner; and
3. Remove from the Site all such Construction Aids and rubbish as Owner may request.

In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to General Conditions, Section 11.02 – Termination for Convenience of Owner.

Section 11.02 - Termination for Convenience of Owner.

A. The Owner, at any time, may terminate the Contract in whole or in part for Owner's convenience, without liability for damages and without need to show cause. Any such termination shall be effected by delivering to the Design-Builder a written Notice of termination specifying the extent to which performance of Work under the Contract is terminated and the

date upon which the termination becomes effective. Upon receipt of the notice of termination, the Design-Builder shall act promptly to minimize the expenses resulting from the termination.

B. The Owner shall pay the Design-Builder for Work of the Contract performed by the Design-Builder and accepted by the Owner for the period extending from the end of the period covered by the last approved Application for Payment up to the effective date of the termination, including any amounts determined to be owing in accordance with General Conditions Article 7 – Changes in the Work. In no event shall the Design-Builder be entitled to compensation in excess of the total consideration of the Contract. In no event shall Design-Builder be entitled to overhead or profit on the Work not performed. Releases of Liens in form and substance satisfactory to Owner of all claims by Design-Builder and its Subcontractors, which releases shall be fully effective upon payment to Design-Builder and its Subcontractors of sums due and owing upon termination, are conditions precedent to payment of any sums by Owner to Design-Builder.

C. In the event of such termination the Owner may take over the Work and prosecute the Contract to completion and may take possession of and may utilize such materials, appliances, and equipment on the Site and necessary or useful in completing the Work.

Section 11.03 - Owner's Right to do Work.

The Owner at any time may notify the Design-Builder that the Owner will have the Work of the Contract or any part thereof, performed by others, without terminating the Contract and without prejudice to any other right the Owner may have. The Owner may recover any and all costs related to such Work and deduct the value of such Work from the GMP.

Section 11.04 - Suspension of Work.

A. The Owner may, with or without cause, order the Design-Builder in writing to suspend, delay or interrupt performance of all or any part of the Work for such period of time as the Owner may determine. The suspension order shall contain the reason or reasons for issuance which may include, but is not limited to, latent field conditions, substantial program revisions, safety concerns, environmental concerns, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired insurance, court order, or acts of God.

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

C. Resumption of the Work. Design-Builder shall resume any Work interrupted, suspended, or delayed when requested to do so in writing by Owner.

D. The Design-Builder specifically agrees that such suspension, interruption, or delay of the performance of the Work shall not increase the cost of performance of the Work. However, to the extent that the suspension of the Work is through no fault of the Design-Builder, the Owner shall consider requests for compensation provided that the justification is submitted in accordance with General Conditions, Article 10.

E. The date of Substantial Completion of the Work shall be extended by Change Order to compensate the Design-Builder for the time lost by the suspension, interruption, or delay under Section 11.04 A.

F. The Owner may terminate the suspension, interruption, or delay of the performance of the Work by a written direction to the Design-Builder or may invoke any other provision of General Conditions Article 11 - Termination or Suspension.

Section 11.05 - Stop Work.

A. Should the Design-Builder fail to comply with the terms of the Contract, including but not limited to the insurance requirements of the Contract, the Owner, at any time, by written order to the Design-Builder, can require the Design-Builder to stop all, or any part, of the Work called for by the Contract. The order shall be specifically identified as a Stop Work Order. Upon receipt of the order, the Design-Builder shall immediately comply with its terms and take reasonable steps to protect the Work covered by the order during the period of work stoppage. The Owner, at its option shall either:

1. Cancel the Stop Work Order after the Design-Builder has successfully remedied the cause of the Stop Work Order.
2. Invoke any other provision of General Conditions Article 11 – Termination or Suspension.

B. The Design-Builder shall not be entitled to an increase in time or costs as a result of the Stop Work Order.

Section 11.06 - Mitigation of Suspension or Termination Costs by Design-Builder.

Design-Builder shall make every reasonable effort to mitigate any termination costs, including, but not limited to, alternate utilization of its work force and using Materials and equipment purchased for the Project to fill other existing and additional orders and contracts. Whether Owner terminates Design-Builder with or without cause or suspends Design-Builder's Work, in no event shall Owner be responsible for suspension or termination expenses (other than provided above), for overhead costs associated with Work not performed by Design-Builder, for any profits Design-Builder would have earned if it had completed the Work, or for any consequential, incidental, or indirect damages. Subject to the provisions of General Conditions, Article 10, Design-Builder shall present in writing its claim for termination charges, providing documentation and justification for each item in reasonable detail. In no event shall the Design-Builder be entitled to compensation in excess of the total consideration of the Contract.

ARTICLE 12 - BENEFICIAL OCCUPANCY

Section 12.01 - Occupancy Prior to Substantial Completion.

A. If, before Substantial Completion, the Owner desires Beneficial Occupancy of any part of the Work, the Owner shall have the right to do so in writing, and the Design-Builder shall in no way interfere with or object to Beneficial Occupancy. Payment for operational costs of project systems at time of Beneficial Occupancy shall be borne by the Owner, unless otherwise specified in the Contract Documents.

B. Said Beneficial Occupancy (1) shall not constitute acceptance of space, systems, materials or elements of the Work without the Owner's written approval; and (2) shall not affect the obligations of the Design-Builder for Work which is not in accordance with the requirements of the Contract or other obligations of the Design-Builder under the Contract.

C. Should the Design-Builder request Owner acceptance of any project system related to the protection of life or property, prior to Beneficial Occupancy or Substantial Completion, the Owner may accept such system; however, the cost of maintaining such system in operating condition, and labor costs to operate the system including costs for remote public safety personnel, shall be borne by the Design-Builder. The Warranty Callback Period will begin from the date of Substantial Completion.

D. The Design-Builder shall continue the performance of the Work in a manner that shall not unreasonably interfere with said use, occupancy, and operation by the Owner.

ARTICLE 13 - INSPECTION AND ACCEPTANCE

Section 13.01 - Owner's Right to Review and Inspect.

A. At all times, Design-Builder shall provide Owner and its representatives with the opportunity to inspect, review, and comment on the progress of on-site and off-site Work for conformance with the Contract Documents. Design-Builder shall provide Owner safe access to the Work. The correction of Work not in conformance with the Contract Documents shall be in accordance with Section 13.03 of this Article. Owner's review, inspection or comment, or failure to review, inspect or comment, on the Work shall not relieve the Design-Builder from its obligation to perform the Work in accordance with the Contract Documents and correct or replace all Work that is not in accordance therewith.

B. Materials and equipment used in the Work shall be subject to testing as required by the Contract Documents and accepted standards and Prudent Industry Practice to establish conformance with the Contract Documents and suitability for intended use. The Owner may request additional testing for any test results below specified minimums at the Design-

Builder's expense. Unless otherwise specified in the Contract Documents, the Design-Builder shall give the Owner a minimum of five (5) Business Days written notice of readiness of the Work for testing and the date fixed for said testing. If the Design-Builder schedules testing required by the Contract Documents on a day or at a time which results in a DASNY employee assigned to the Project receiving overtime compensation, the DASNY may deduct such overtime compensation from moneys due the Design-Builder. No testing by the Owner or by a testing laboratory on behalf of the Owner, or failure to test, shall relieve the Design-Builder of its responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the Contract Documents.

C. The inspection of covered Work may be ordered by the Owner, and if so ordered, the Work shall be uncovered by the Contractor. If said Work is found to be in conformance with the Contract Documents, the Owner shall pay the cost of uncovering the Work. If said Work is not found to be in conformance with the Contract Documents, the Design-Builder shall pay the costs of uncovering the Work and its correction and the Owner may deduct such costs from moneys due the Design-Builder.

Section 13.02 - Owner-Directed Inspections.

At any time during Design-Builder's performance of the Work, Owner reserves the right to hire a third party to inspect, review, and comment on Design-Builder's Work. Owner shall be responsible for the costs of the first such third party inspection. In the event that subsequent inspections or reviews identify Work that is not in conformance with the Contract Documents of the same type identified in a previous inspection or review, Design-Builder shall pay all costs related to the third-party's additional inspection and review performed relating to the correction of the Defective Work and any related remedy.

Section 13.03 - Correction of Defects.

In the event that Owner determines that any portion of the Work is not in conformance with the Contract Documents (Defective Work), it shall be reconstructed, made good, replaced and/or corrected by the Design-Builder at its expense, including all work destroyed or damaged by said removal, replacement or correction within a reasonable period of time after receipt of written notice from Owner. Rejected material shall be removed from the Site. If Owner determines that it is not desirable to replace or correct Defective Work, the GMP shall be reduced by an amount reasonably determined by the Owner. In the event that Design-Builder refuses, after written notice from Owner, to correct Defective Work, Owner may correct Defective Work with its own forces or Separate Contractors. Design-Builder shall reimburse Owner for any costs and expenses related to the correction of Defective Work, including an Owner administrative fee. Correction of Defective Work under this Section shall not void or limit the warranties provided by Design-Builder under this Contract. Except in the case of an emergency presenting imminent risk to the safety of persons or property, Owner will give written notice to Design-Builder before commencing corrective work and will give Design-Builder a reasonable opportunity to observe and document the Defective Work prior to correction. In the event that Owner deletes portions of the Work from this Contract due to Design-Builder's refusal or demonstrated inability to perform the Work, Design-Builder shall be responsible for Owner's actual cost to perform the deleted Work with its own forces or Owner's Separate Contractors, including Owner's administrative fee. The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change which results in a decrease in the GMP shall be as reasonably determined by the Owner and shall include the overhead and profit allocable to the deleted or changed Work unless the Owner determines otherwise.

Section 13.04 - Failure to Provide Notice of Inspection.

If Design-Builder fails to provide Owner and its designees with reasonable Notice of, or access to, any of the inspections required by the Contract Documents, and Owner reasonably believes that it is necessary to dismantle Work in order to conduct such an inspection, then Design-Builder shall bear the expense of dismantling and reassembling of such Work. If Owner requests that Design-Builder dismantle Work that Owner failed to inspect despite receipt of a timely delivered notice from Design-Builder of the availability of such Work for inspection, then Owner shall pay the expense of dismantling and reassembling such Work.

Section 13.05 - Final Completion.

No previous inspection shall relieve the Design-Builder of the obligation in the performance of the Work in accordance with the Contract. No payment, either partial or full, by the Owner to the Design-Builder shall excuse any failure by the Design-Builder to comply fully with the Contract Documents. The Design-Builder shall remedy all Defects and deficiencies, paying the cost of any damage to other Work. Final Payment to the Design-Builder constitutes final completion of the Work of the Contract Documents.

Section 13.06 - Warranties.

A. Services. Design-Builder represents and warrants to Owner that Design-Builder's and its Subcontractor's services related to the Work, including design, engineering, and construction management services, will comply with the terms of the Contract and Prudent Industry Practice. Owner's review or approval of any Construction Documents prepared by Design-Builder or its Subcontractors shall not constitute a waiver by Owner of any of Design-Builder's warranties or obligations hereunder.

B. Not Used.

C. Procurement and Construction. Design-Builder represents and warrants that such Design-Builder-supplied construction equipment and materials will comply with the specifications contained in the Contract Documents. Design-Builder further represents and warrants to Owner, and shall obtain similar representations and warranties from the appropriate Subcontractors, that all of its Work, including design and construction management services, will comply with the Contract Documents and meet the applicable standards of care for design professional services and Prudent Industry Practice and that the Work: (i) will be constructed in a good and workmanlike manner; and (ii) will conform in all material respects to the Contract Documents, sound construction practices and all Laws. Design-Builder further represents and warrants that all equipment and materials furnished by Design-Builder, or its Subcontractors: (a) will be of new manufacture and will be free from Defects in design (if designed by Design-Builder or purchased by Design-Builder from a Subcontractor), workmanship, and materials; (b) will be in compliance with all applicable Laws; (c) have been transported, handled, stored, maintained, assembled, installed and tested according to the manufacturer's recommendations (unless otherwise required by the Contract Documents); (d) will have been fully tested to meet the requirements of the Contract Documents, including the Performance Guarantees set forth in Section 24.01 A(1) and Exhibit I; and (e) will perform in accordance with the requirements of the Contract Documents, including passing the Performance Tests. Excepted from the above warranties are normal wear and tear and the Owner's failure to operate, service or maintain equipment in accordance with Manufacturer's recommendations during the warranty period. **(Owner reserves the right to issue an Addendum after the RFP is issued that will identify equipment and system performance parameters, guaranties, and liquidated damages.)**

D. Nonconforming Work. If Defective Work is discovered prior to the end of the applicable Warranty Callback Period, and Owner gives Design-Builder notice of such Defect within a commercially reasonable time, Design-Builder shall, at no additional cost to Owner, promptly re-perform, repair, or replace any such item of the Work (including without limitation engineering, design, removal and installation, or supply of equipment or materials) so that the Work is in conformance with the Contract Documents. If Owner becomes aware of a warranty issue in the final thirty (30) Days of the initial two (2) year Warranty Callback Period, Owner may notify Design-Builder within thirty (30) Days after the expiration of the initial two (2) year Warranty Callback Period. The decision by Design-Builder to repair or replace shall be made following consultation with Owner, and the repair or replacement shall be scheduled consistent with Owner's or the Client's operating requirements so as to minimize loss of use of any portion of the Facility to which the Work relates. Owner shall provide Design-Builder reasonable access to the Facility and Facility records for the purposes of assessing the nature of the Defect. Design-Builder shall bear all costs and expenses associated with correcting any Defective Work and other direct property damage of Owner to the extent caused by Design-Builder's breach of warranty; provided, however, to the extent that an action of Design-Builder its Subcontractors has caused the loss or damage to other property of Owner to not be covered by Owner's property insurance, Design-Builder shall bear the cost of repair and any related damages. Such costs and direct damages shall include, without limitation, the costs of necessary disassembly, transportation, reassembly, retesting, reworking, repair, or replacement of such Defective Work, as well as disassembly and reassembly of adjacent Work when necessary to give access to Defective Work, and damages caused to any other portion of the Work, or the work of Owner's Separate Contractors damaged by the Defective Work. Damages recoverable by Owner in case Design-Builder fails to perform its obligations under this Section shall also include reasonable attorneys' fees, design and engineering fees,

the costs of testing reasonably required to verify that the repaired or replaced Work conforms to the applicable warranties and requirements of this Contract in enforcing the provisions of this Section. Any repair and replacement performed by Design-Builder pursuant to this Section shall comply with Laws, Prudent Industry Practice (or higher standards if specified in the Contract Documents), and the Contract Documents.

1. **Standard Warranty Work.** Except in the case of an Operating Emergency, Design-Builder shall conduct work to correct Defects (“**Warranty Work**”) on a straight-time basis unless Owner reasonably determines that overtime is necessary to avoid or minimize the effects of an outage or load reduction. All such straight time or overtime costs will be borne by the Design-Builder.
2. **Operating Emergency Warranty Work.** In the event of an Operating Emergency which results from Work which is Defective or does not comply with the warranties contained in this General Conditions, Section, Owner shall in its sole judgment, determine how and when to accomplish the corrections. The Owner will endeavor to consult with Design-Builder to determine who would best be able to correct the Defective Work provided that such consultation, in Owner’s sole assessment, shall not delay the action deemed necessary by Owner to correct the Operating Emergency. If Owner determines that Design-Builder would best accomplish such correction, this General Conditions, Section shall apply to such correction. If Owner determines that Owner would best accomplish such correction, Owner shall promptly correct, or cause to have corrected, such Defective Work by repair or replacement of any Defective Work. Such Warranty Work shall be performed on an overtime schedule basis if Owner reasonably determines such a schedule is necessary to avoid or minimize the effects of an Operating Emergency.

E. Warranty Callback Period. The Warranty Callback Period for the Work shall run for a period of two (2) years from Substantial Completion. If any portion of the Work shall be repaired, replaced, or otherwise corrected pursuant to this General Conditions, Section, the Warranty Callback Period for such portion of the Work shall be extended from the date of the completion of the repair, replacement, or correction for two years from the date of the completion of the repair, replacement, or correction; provided, however, that in no event shall the Warranty Callback Period for the Work exceed four (4) years from Substantial Completion.

F. Performance Data and Statistical Analysis. Owner shall maintain data regarding operating conditions and parameters within industry standard record-keeping practices to demonstrate compliance with the Facility’s operating requirements and permits as specified in the Contract Documents. Owner and Design-Builder agree to gather and analyze the available data utilizing industry standard statistical methods to confirm Facility performance and functionality. Design-Builder agrees that such aggregate data shall be used for all analysis under this General Conditions, Section and that individual data points outside of the operating conditions specified in the Contract Documents shall be examined for corrective actions and shall not void the warranty provided in this General Conditions, Section.

G. Not Used.

H. No Modification of the Statute of Limitations. Nothing contained in this General Conditions, Section shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents with respect to the Work, including warranties and obligations with respect to latent Defects. Establishment of the Warranty Callback Period relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the other obligations to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder’s liability with respect to the Design-Builder’s obligations other than specifically to correct the Work.

I. Latent Defects. A latent Defect is a Defect which exists in the Work prior to the end of the Warranty Callback Period and that was not and normally would not be revealed, discovered, or located before the end of the Warranty Callback Period by any reasonably careful inspection or by any known or customary test. If and whenever a latent Defect becomes apparent, Owner shall, as promptly as practical, notify Design-Builder, and Design-Builder shall correct such Defect promptly after receiving such notice, by re-performing or replacing the Work at its expense and in accordance with applicable provisions of the Contract Documents, notwithstanding any expiration of the Warranty Callback Period.

J. Subcontractor Warranties. All guarantees and warranties from Subcontractors shall be made to run in favor of Owner and Design-Builder. Unless such guarantees and warranties generally run for a greater period of time, Design-

Builder shall obtain guarantees and warranties from Subcontractors that run at least two years from Substantial Completion. Design-Builder shall provide Owner with the information necessary to determine the additional cost involved if such guarantees and warranties are extended. Design-Builder agrees during the Warranty Callback Period, as soon as reasonably possible after receipt of Notice from Owner specifying any Defects, to cause the Subcontractor of such Work (or upon failure or refusal by such Subcontractor to do so itself), to inspect and to repair such Defects. All such repairs and replacements shall comply with this Contract, Laws, and Prudent Industry Practice. Design-Builder shall cause the Subcontractor of such Work (or upon failure or refusal by such Subcontractor to do so itself), to bear all costs and expenses associated with correcting any such Defective Work, including necessary disassembly, transportation, reassembly, and retesting, as well as reworking, repair, or replacement of such Work, and disassembly and reassembly of adjacent Work when necessary to give access to Defective Work. Notwithstanding the issuance of or inability to obtain any Subcontractor warranties, Design-Builder shall be responsible for the Work and compliance thereof within the requirements of the terms of the Contract Documents.

K. Root Cause Repairs. If chronic failure of any of the Materials or components of the Work occurs during the Warranty Callback Period (either original or as may be extended as a result of failures during the original Warranty Callback Period), as the case may be, Design-Builder shall investigate and prepare a report documenting the root cause of such chronic failure within a commercially reasonable time period and make such repairs, replacements or adjustments necessary to correct the root cause of the chronic failure. For purposes of this Section, a “**chronic failure**” shall mean the second occurrence of substantially the same Defect in any Construction Equipment or Material or component part of any Construction Equipment or Material. Owner reserves the right to hire a third-party consultant to act as an Other Owner Authorized Party to inspect, review and evaluate Design-Builder’s root cause investigation and related conclusions. Design-Builder shall cooperate fully with Owner’s third-party consultant and provide all documentation necessary for the consultant’s review and evaluation of the chronic failure.

L. Not Used.

M. Cure Rights of Owner for Breach of Warranty. Except as otherwise provided in this Section, within ten (10) Days (or sooner, if circumstances require) of receipt by Design-Builder of Notice from Owner specifying a Defect, Design-Builder shall give notice to Owner of when and how Design-Builder shall remedy said Defect. All Defects that have cost, schedule, safety, or operational impacts shall be remedied by Design-Builder immediately. If (i) Owner objects to Design-Builder’s explanation of the root cause of any Defect, the proposed remedy or remedy period and Design-Builder does not offer a substitute root cause, remedy or remedy period satisfactory to Owner, or (ii) if Design-Builder does not begin and diligently proceed to complete said remedy within the time period specified by Design-Builder and accepted by Owner, or (iii) if Design-Builder unreasonably fails to specify a remedy or remedy period acceptable to Owner, Owner, after Notice to Design-Builder, shall have the right to perform or to have performed by third parties an acceptable evaluation of the root cause and/or remedy, and the reasonable and actual costs thereof shall be paid by Design-Builder, together with all reasonable attorneys’ fees, design and engineering fees, and Owner’s Administrative Fee.

N. Warranty and Passage of Title. Design-Builder warrants that it passes good title to all Work provided pursuant to this Contract to Owner, free and clear of all Liens, claims, judgments, security interests, or encumbrances upon delivery to the Site. Passage of title shall not affect risk of loss, which shall be governed by General Conditions, Section 5.05 (C).

O. Not Used.

ARTICLE 14 - PROTECTION OF PERSONS AND PROPERTY

Section 14.01 - Safety, Loss Control, and Emergencies.

A. Safety Standards. Design-Builder shall be responsible for ensuring that all Work performed under this Contract complies with all applicable safety standards, Laws and regulations. The Design-Builder shall secure and read Owner’s safety brochure and watch the Owner’s Site safety video available on the Owner’s website (www.dasny.org), and Design-Builder shall also observe all applicable Owner safety rules and guidelines set forth in the Contract Documents. Design-Builder alone shall be responsible for the safety, adequacy, and efficiency of its Construction Aids, Construction Equipment, or its Means and Methods. This requirement shall apply continuously and not be limited to normal working hours. Owner’s review of Design-Builder’s performance is not intended to include review of the adequacy of Design-Builder’s safety measures in, on, or near the Premises. The Design-Builder shall, at all times, take every precaution against injuries to

persons or damage to property and for the safety of persons engaged in the performance of the Work on the job Site. The Design-Builder and each Subcontractor shall comply with all applicable rules, regulations, codes and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The Design-Builder shall establish and maintain, at all times, safety procedures in connection with the Work as required by the current New York Labor Law and regulations of the Occupational Safety and Health Act (OSHA).

B. Protection of Persons. Design-Builder shall be responsible for the protection of all Persons including members of the public, employees of Owner, and employees of other contractors or subcontractors. Design-Builder shall take all reasonable precautions to protect the workers and others about the Premises and the public on the streets, highways, or rights-of-way. The Design-Builder shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work. The Design-Builder shall designate a responsible person at the Site whose duties shall include maintaining Site safety pursuant to OSHA and any other applicable requirement, conducting weekly tool box meetings with its and its Subcontractors' workers on the Site to review compliance with the safety precautions and programs required by their respective Subcontracts, and providing the Owner with a copy of such meeting minutes.

C. Safety and Loss Control Program. The Design-Builder shall implement a Site-specific Safety and Loss Control Program that meets the minimum requirements of Owner and Governmental Agencies, and comply with the program during the performance of the Work. Attached hereto as Exhibit U is Design-Builder's general corporate Safety and Loss Control Program which Design-Builder represents and warrants meets the minimum requirements of Owner and applicable Governmental Agencies. Forty five (45) Days prior to the Mobilization Date, Design-Builder shall submit a Site-specific Safety and Loss Control Program for Owner's review and comment. Based on the Owner's comments, Design-Builder shall submit the final Site-specific Safety and Loss Control Program by within fifteen (15) Business Days of receipt of Owner's comments and such final program shall take the place of and replace Design-Builder's general corporate Safety and Loss Control Program as revised Exhibit U. Special emphasis must be given to access to emergency medical treatment, first aid, evacuation, and basic safety training including orientation of each worker on the specific inherent safety risks of the job Site and specific training required by OSHA. The security element of the plan shall include special consideration for protection if the Project is in a high crime area. A copy of Design-Builder's Site-specific job safety and security plan must be on Site at all times. The inspection, utilization or acceptance of all or any portion of the Work by Owner shall not absolve Design-Builder of its duty of furnishing a safe workplace for all personnel engaged in the Work. Unless Design-Builder has taken appropriate safety and protective measures to prevent injury to Persons or property, Design-Builder shall not expose Owner's employees or Owner's Separate Contractors, Other Owner Authorized Representative, including Owner's Technical Advisor, or their employees to: (a) any chemical substance or Hazardous Materials used in connection with performance of the Work; (b) any known Hazardous Materials brought to the surface by Design-Builder in connection with performance of the Work; or (c) any unsafe or hazardous condition in connection with performance of the Work. Nothing herein shall relieve Design-Builder of its obligations and liability for the safe handling and utilization of such chemical substance or Hazardous Materials. Design-Builder's Safety and Loss Control Program shall include, but not be limited to, the following provisions:

1. The Design-Builder shall be directly responsible for implementation and monitoring of its own safety program and provide adequate first aid and medical service and/or facilities for its employees and Subcontractors.
2. The Design-Builder shall provide an orientation program for all management and labor personnel employed on the Work prior to their beginning of employment at the Site. This program will include information regarding identification badging, work rules, labor agreement, safety health and accident prevention program, drug testing, Project information, and miscellaneous Site-specific requirements. Each Design-Builder and Subcontractor employee shall be required to attend this orientation.
3. Design-Builder shall furnish all safety equipment and safeguards suitable to the occupational hazards involved and conforming, in all respects, to the safety regulations of the Work.
4. Design-Builder shall provide and maintain all passageways, guard fences, flags, lights, barricades and other facilities for protection required by Laws or rendered reasonably necessary by local conditions and shall erect shelters sufficient to protect the Work from damage. All protective measures, such as barricades, shall be arranged to ensure the safety of the workers and any passersby and shall be removed by Design-Builder at the completion of the Work.

5. All incidents, injuries, accidents, and illnesses must be reported to the Owner's Representative immediately. Design-Builder shall submit a written report, including a copy of the Form C-2, Employers Report of Injury/Illness and the recorded OSHA Log, to Owner within twenty-four (24) hours after any injury, accident, incident, illness, or unusual safety occurrence during performance of the Work including, but not limited to, personal injury or death of any employee or any member of the public, or damage to the Work, the Premises or adjacent property. The Design-Builder shall cooperate fully with Owner in the event Owner investigates the occurrence. The written report shall include the following information:
 - a. The name, organization, telephone number, and location of the contractor;
 - b. The name(s) and address(es) of every witness to such occurrence;
 - c. The name and title of the person making the report;
 - d. The date and time of the accident/incident;
 - e. The location of the accident/incident;
 - f. A brief description of the accident/incident;
 - g. The cause of the accident/incident if known;
 - h. The nature or description of the injuries, if any;
 - i. Details of any existing chemical hazard or contamination;
 - j. The estimated property damage;
 - k. The nature of the damage;
 - l. Actions taken to ensure safety and security; and
 - m. Any other damage or injuries sustained.

D. Responsibility and Liability. Design-Builder shall be solely and completely responsible and liable for any damages caused by Design-Builder's or its Subcontractors' negligent acts or omissions and for all risk conditions created by Design-Builder and its Subcontractors at the Site, including safety of all Persons and property, during performance of the Work. Design-Builder shall be fully responsible for the protection of all Persons including members of the public, employees of Owner, employees of Design-Builder and its Subcontractors, and employees of other contractors or subcontractors from risks and conditions created by Design-Builder and its Subcontractors at the Site. Design-Builder shall take all reasonable precautions to protect the workers and others about the Premises and the public on the streets, highways, or rights-of-way from harm or damage caused by Design-Builder's and its Subcontractors' operations at the Site.

Action to Prevent Injury, Loss or Damage in Emergencies. Design-Builder shall take actions, in the event of any emergency endangering life or property, as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and, as soon as possible, report any such incidents and Design-Builder's response thereto to Owner.

1. If Design-Builder has not complied with Laws, Owner's safety requirements, its own Safety and Loss Control Program, or has not taken reasonable precautions for the safety of the public, the Owner's employees, Design-Builder's employees or its Subcontractors' employees, or protection of the Work and the existing structures, or any property on or adjacent to the Premises, and thereby creates or causes an emergency or unsafe condition requiring immediate action, then Owner, with or without Notice to Design-Builder, may, but shall be under no obligation to, take any action that Owner shall deem necessary, including suspension of the Work, causing additional work to be performed and Materials and Construction Aids to be furnished, to mitigate or remedy

the emergency. Owner's action or inaction shall not limit Design-Builder's liability or relieve Design-Builder of its obligations under the Contract Documents.

2. Design-Builder shall reimburse Owner for any reasonable direct expenses incurred by Owner, including Owner's Administrative Fee, in taking such actions, performing any Work or emergency work, or furnishing any Materials and equipment pursuant to General Conditions, Section 14.01 (E) (1). Owner shall not be liable to Design-Builder for any damages or costs incurred by reason of Owner's exercise of its rights pursuant to General Conditions, Section 14.01 (E) (1).

E. Drug and Alcohol Testing. In order to maintain a safe, healthy and efficient work environment, and to minimize absenteeism and tardiness, Owner requires that the Work Site be a drug and alcohol-free environment. Prior to commencement of Work on Owner's Site, Design-Builder must have a substance abuse program in place and approved by Owner. Owner shall review the Design-Builder's substance abuse program and, if acceptable, approve the Design-Builder's program prior to commencement of Work. Design-Builder will test Design-Builder's and its Subcontractors' employees in accordance with its substance abuse program. Design-Builder will test its employees in accordance with its substance abuse program. Design-Builder's employees will be subject to a drug and alcohol test based on their involvement in or cause of a reportable accident or incident which causes personal injury or property damage in accordance with applicable Laws. Design-Builder's employees will be subject to a drug and alcohol test based on a reasonable and articulated belief that the employee is using or has recently abused alcohol or drugs. All testing shall be paid for in full by Design-Builder. Attached hereto as Exhibit J is Design-Builder's general corporate substance abuse screening policy which Design-Builder represents and warrants meets Prudent Industry Practice. Forty-five (45) Days prior to the Mobilization Date, Design-Builder shall submit a Project-specific substance abuse screening policy for Owner's review and comment. Based on the Owner's comments, Design-Builder shall submit the final Project-specific substance abuse screening policy within fifteen (15) Business Days of receipt of Owner's comments and such final policy shall take the place of and replace Design-Builder's general corporate policy reflected in Exhibit J. The Parties shall provide written notice to each other of any revisions to their respective substance abuse program policies.

F. Removal of Offending Employees. Design-Builder shall immediately remove, and deny access to Owner's Site to, any employee or principal of Design-Builder or Subcontractors who violates or can be reasonably suspected by Design-Builder of violating the policy adopted by Design-Builder to conform to this Section. For all of Design-Builder's Personnel removed from Site, Design-Builder shall provide to Owner within five (5) Business Days from date of removal all information and documentation related to such removal and as necessary for Owner's security records.

Section 14.02 - Protection of the Work and Adjacent Property.

A. Adequate Protection of the Work. Design-Builder shall provide and maintain adequate protection of all portions of the Work, of the property of Design-Builder, Owner, and others connected with the Work and others (when affected or utilized during performance of the Work) from physical loss and damage, including vandalism, theft, malicious mischief, and damage by weather. The Design-Builder shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work. The Design-Builder shall, at all times: (1) guard the Owner's property from damage or loss in connection with the Work; (2) guard and protect the Design-Builder's Work and adjacent property; and (3) replace or make good any said loss or damage unless said loss or damage is caused directly by the Owner.

B. Protection by Subcontractors. Design-Builder shall conduct its operations and shall require all Subcontractors to conduct their operations so as to protect from damage to existing structures, the Work, or work installed by Owner or Owner's Separate Contractors.

C. Protection of Property. Design-Builder shall protect any and all property including, but not limited to, parallel, converging, and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, natural gas pipelines, oil pipelines, steam pipelines, water pipelines, drainage ditches, culverts, and any and all property of third parties from damage as a result of its performance of the Work. In addition, until transfer of care, custody and control to Owner, Design-Builder shall have the responsibility to repair or replace damaged Work subject to Owner's reasonable discretion and acceptance and Design-Builder's schedule and sequence of Work.

1. Preservation of Monuments and Stakes. Design-Builder shall carefully preserve all monuments, bench marks, reference points, and stakes. Design-Builder shall be charged with the expense of replacement of any such items destroyed and shall be responsible for the additional cost of the Work or loss of time that may be caused by the destruction of such items. Permanent monuments or bench marks subject to removal or being disturbed shall be protected until they can be properly referenced for relocation.
2. Protection of Concrete Surfaces. During the performance of subsequent Work, completed concrete floors and other concrete surfaces shall be protected from chipping, gouging, scratching, staining, and other damage. As reasonably necessary, heavy planks and mats shall be placed under equipment and materials being stored, moved, assembled, or installed on or above concrete floor surfaces. Nonflammable, oil-resistant coverings shall be used to protect concrete surfaces from staining.
3. Protection of Grating and Stair Treads. During the performance of subsequent Work, floor gratings and stair treads shall be protected against damage from heavy loads, movement of equipment, materials, flame cutting, welding, and other such construction damage. Where heavy equipment or material loads are to be stored or moved over gratings, such loads shall be supported directly from the structural supports and shall not be allowed to bear on the gratings.
4. Protection of Electrical Raceway, Cable, and Lighting Fixtures. Design-Builder shall protect electrical raceway, cable, lighting fixtures, and associated support systems against damage from movement of equipment and materials, welding, flame cutting, and other construction damage. Raceway and supporting structures for raceway and lighting fixtures shall not be used as access scaffolding at any time. Whenever welding or flame cutting operations occur above or near raceways, cables, or lighting fixtures not shielded from such operations by concrete floors or other protective covers, Design-Builder shall protect the raceways, cables, and lighting fixtures from damage by means of fire-resistant boards or blankets.
5. Repair of Painted Surfaces. After erection, Design-Builder shall furnish and apply touch-up coatings to all abraded or damaged areas on shop-coated equipment surfaces installed by the Design-Builder. Surfaces shall be properly prepared before application of coatings. The touch-up coatings shall be of a type equivalent to the shop coatings. Where touch-up coatings are provided by the material or equipment Subcontractor, those coatings shall be used for touch-up and all surface preparation and coating application procedures furnished by the material or equipment Subcontractor shall be followed. Coatings used for touch-up shall have the manufacturer's expiration date clearly marked on the container and shall not be used if they have aged beyond their documented expiration date.
6. Galvanized Surface Coatings. All galvanized surfaces on which the galvanizing is removed by cutting, drilling, or by any other operation shall be re-galvanized with a galvanized coating as approved by Owner. Design-Builder shall furnish this protective material and shall apply it in the field to any surface where the galvanized coating is broken or removed.

Section 14.03 - Protection of Work.

- A.** The Design-Builder shall be responsible for the safety, efficiency and adequacy of the Design-Builder's Work, plant, appliances and methods, and for any damage which may result from the failure or the improper construction, maintenance, or operation of such Work, plant, appliances and methods.
- B.** The Design-Builder shall make inspections as necessary in order to confirm that the Work both on and off Site is stored and protected in accordance with the Contract Documents, manufacturer recommendations, insurance requirements, and Prudent Industry Practice.
- C.** The Design-Builder shall have full responsibility to protect and maintain all materials and supplies on and off site in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance and completion. The Design-Builder shall maintain an inventory of all materials and supplies for the Project that are delivered to the Site or approved for off-site storage facilities.

D. The Design-Builder shall immediately report any loss, theft, burglary, vandalism or damage of materials or installed work to the Owner by phone and facsimile as soon as it is discovered. If vandalism, theft, or burglary is suspected as the cause of the loss, the Design-Builder shall notify Site security personnel and the municipal police, protect the place of the loss until released from protection by the Owner, and insure that no potential evidence relating to the loss is removed from the place of the loss.

E. Any insurance claim alleging damage to the Work and delay or acceleration costs shall be submitted to the applicable insurance provider.

F. A claim for damage to the Work shall also include the following:

1. A copy of a police report (if applicable).
2. A complete inventory of damaged or lost items including:
 - a. Description of each item.
 - b. Purchase date and proof of delivery of each item.
 - c. Supplier from whom purchased.
 - d. Serial number (if applicable).
 - e. Price of each item.
3. The name, address and telephone number of the person who controlled the lost or damaged items immediately before the loss or damage.
4. The name, address and telephone number of the person who discovered the loss or damage.
5. A written description of how the loss or damage occurred.

G. Not Used.

Section 14.04 - Hazardous Materials.

A. Compliance.

1. Design-Builder and Owner shall comply with all applicable OSHA hazard communication requirements. Design-Builder shall provide to Owner, SDS for any Hazardous Materials brought on Site by Design-Builder. Copies of the SDS shall include the Contract number and shipping location. Design-Builder shall cause each SDS to be sent to the shipping location identified in this Contract at least ten (10) Business Days prior to the delivery of such materials to the Site. Design-Builder shall maintain on the Site, at all times, complete records and inventories, including SDS of materials described in this Section that are being used by it or its Subcontractors, or any Persons for whose actions it is responsible on the Site.
2. Design-Builder shall provide written Notice of the presence of all Hazardous Materials found on or brought to the Site by Design-Builder or its Subcontractors to local fire, medical, and law enforcement agencies as required by the applicable Laws with a copy of such Notice to Owner.
3. Design-Builder shall not use asbestos or any asbestos containing materials regardless of the quantity of asbestos for any portion of the Project. Any and all materials shall contain zero percent (0%) asbestos. If Design-Builder or its Subcontractors use asbestos or asbestos containing materials on any portion of the Project, Design-Builder shall immediately remove such asbestos or asbestos containing materials at Design-

Builder's cost and Design-Builder shall indemnify, defend and hold harmless Owner, Owner's Separate Contractors, and Owner's Technical Advisor for any claims related to asbestos.

4. Design-Builder shall provide the necessary information in training to its employees on each Hazardous Material to which they may be exposed to on the Site. Design-Builder and Owner shall also exchange suggestions for appropriate protective measures in handling those Hazardous Materials, at Design-Builder's written request. Design-Builder shall identify to Owner in advance the quantities of all "**Chemicals of Interest**" listed under the Chemical Facility Anti-Terrorism Standards of the Homeland Security Appropriations Act of 2007 that will be brought onto the Site.

B. Hazardous Material Releases.

1. Pre-Existing Hazardous Materials. Design-Builder will not be responsible for any pre-existing Hazardous Materials not introduced to the Site by Design-Builder, its Subcontractors or anyone else for whom Design-Builder is responsible. To the extent such pre-existing Hazardous Materials have been released into the environment, including soil and water (hereinafter referred to as "**Pre-Existing Hazardous Conditions**"), Design-Builder will not be responsible except to the extent Design-Builder, its Subcontractors or anyone else for whom Design-Builder is responsible, by negligence or willful misconduct, exacerbates such Pre-Existing Hazardous Conditions where Design-Builder knew or should have reasonably known of such hazardous conditions. If Design-Builder encounters Pre-existing Hazardous Conditions, Design-Builder shall immediately: (i) secure or otherwise isolate such Pre-Existing Hazardous Conditions; (ii) stop all Work in connection with such Pre-Existing Hazardous Conditions and in any area affected thereby; and (iii) notify Owner (and thereafter confirm such notice in writing). Design-Builder shall not be required to resume Work affected by such Pre-Existing Hazardous Conditions or in any such affected area until after Owner has delivered to Design-Builder written notice (a) specifying that such Pre-Existing Hazardous Conditions and any affected area is or has been rendered safe for the resumption of the Work or (b) specifying any special conditions under which such Work may be resumed safely and in compliance with all Laws. The Parties will proceed in accordance with General Conditions, Article 7 as to entitlement to or the amount or extent of an adjustment, if any, in GMP or the Milestone Dates as a result of the interruption of the Work or such special conditions under which the Work is agreed to be resumed by Design-Builder.
2. Hazardous Materials for Which Design-Builder is or Becomes Responsible. With regard to Hazardous Materials for which Design-Builder is (or becomes) responsible pursuant to the Contract Documents, in the event Design-Builder or any of its agents causes any spills or releases of any such Hazardous Material into the environment which require reporting to Governmental Agencies or remediation under any applicable Law, Design-Builder shall be responsible for ensuring timely and adequate compliance with reporting or remediation requirements, and will immediately provide Owner with the details, status, and compliance efforts associated with the spill or release and will coordinate all compliance activities with Owner's designated environmental or safety specialist for the Site. If, in the course of performance of the Work, Design-Builder or its Subcontractors encounters on the Site or any portion of the Site on which the Work may occur, any substance that it reasonably believes is a Hazardous Material, in such quantities and at such levels that may require investigation or remediation pursuant to Laws, Design-Builder shall immediately suspend the Work in the area affected and immediately report the condition to Owner's Representative orally followed by a written Notice. To the extent such spill or release involves (i) Hazardous Materials introduced to the Site by Design-Builder, its Subcontractors or any Person for whom Design-Builder or its Subcontractors may be responsible, (ii) Hazardous Materials where Design-Builder, its Subcontractors or anyone else for whom Design-Builder is responsible, by negligence or willful misconduct, exacerbates Pre-Existing Hazardous Conditions or (iii) Hazardous Materials contained in or packed with Construction Equipment provided by Design-Builder or its Subcontractors, then any investigation, response, removal, cleanup or other remedial action required by applicable Laws or any Governmental Agency shall be performed by Design-Builder or its Subcontractors at their cost.

C. Design-Builder Obligations. Design-Builder shall not utilize (and shall prohibit Subcontractors from utilizing) any construction materials or equipment (whether or not totally enclosed) containing Hazardous Materials; provided, however, Design-Builder (and Subcontractors) may use and store in quantities reasonably necessary to perform the Work, but only in accordance with applicable Laws, including, but not limited to, providing all necessary spill containment and

other necessary storage vessel, the following substances: natural gas, gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), greases, sealant(s), combustible gases, form oil(s), solvent(s), adhesives, paints, coatings, and all other materials that are used or consumed in or during construction or testing of the Work and its constituent systems and components thereof. Any other substances brought to or stored on or at the Site shall require specific prior written authorization from Owner and, as a condition of such authorization, Design-Builder shall provide Owner with Materials Safety Data Sheets covering any Hazardous Substance furnished under or otherwise associated with the Work (including the construction equipment). Design-Builder shall maintain on the Site, at all times, complete records and inventories, including Materials Safety Data Sheets, of materials described in this Section that are being used by it or its Subcontractors, or any persons for whose actions it is responsible on the Site.

D. Hazardous Waste. Design-Builder shall generate no Hazardous Waste pursuant to the performance of the Work other than as provided in the Contract Documents, and shall use only non-hazardous substitutes for paints, solvents, or any other materials which substitutes will not have the potential to constitute Hazardous Waste when used or disposed. In the event Design-Builder believes that non-hazardous substitutes are not reasonably available and Design-Builder has no reasonable alternative but to generate Hazardous Waste hereinafter “**Design-Builder’s Hazardous Waste**”), Design-Builder shall:

1. Coordinate with Owner’s designated environmental or safety representative for the Site in advance of the generation of the Design-Builder’s Hazardous Waste, such coordination to include, but not be limited to, the following: (a) providing evidence satisfactory to Owner’s designated environmental or safety representative for the Site that non-hazardous substitutes are not reasonably available; (b) providing information on the timing and amount of the Hazardous Waste to be generated; and (c) providing any other information which Owner’s designated environmental or safety representative for the Site may reasonably require for purposes of compliance with Hazardous Material Laws;
2. Obtain prior written approval from Owner’s designated environmental or safety specialist for the Site, which will not be unreasonably withheld, as to the quantity and timing of the generation of the Hazardous Waste; and
3. Notwithstanding the foregoing, in the event that Design-Builder generates Design-Builder’s Hazardous Waste, the Hazardous Waste must be managed using an Owner-approved waste vendor, and under Owner’s EPA I.D. Number where applicable. Owner will process the Hazardous Waste, with the actual direct costs of transportation and disposal being reimbursed to Owner by Design-Builder.

Section 14.05 - Protection of Lives and Health.

A. The Design-Builder shall make daily observations of the safety practices of all of its and its Subcontractor’s Work activities on the job Site and check their compliance with municipal, state and federal safety requirements. If a safety violation is found, the Design-Builder shall give the Owner immediate written notice of the deficiency, and require the correction of the safety violation before the affected Work continues. If the Design-Builder or its Subcontractor does not correct the deficiency within three (3) hours of knowledge of the safety violation or the above-required written notice from the Design-Builder, the Owner may require the Design-Builder or its Subcontractor to leave the job Site or may authorize Owner’s own forces or an Owner’s Separate Contractor to erect or provide the required safety structures, equipment, or procedures all at Design-Builder’s cost, plus Owner’s Administrative Fee. The Design-Builder shall provide a copy of all notices under this Section to the Owner. Any slow down or delay in the Work caused by actions under this Section shall not be a valid basis for a delay or loss or income claim by the Design-Builder.

B. Not Used.

C. The Design-Builder shall maintain a record of all cases of death, illness or injury requiring medical attention, hospitalization or causing loss of time from work, arising out of and in the course of performance of Work of the Contract. The Design-Builder shall ensure that it and its Subcontractors on the Project shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of the Work under the Contract, and shall immediately notify the Owner in writing of any injury which results in hospitalization or death. The Design-Builder shall provide to the Owner a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any job-related injury on the Owner’s job Site. Further, a copy of

the OSHA Log of Injury and Illness shall also be provided to the Owner for any reporting period in which a job-related injury or illness is recorded.

D. The Design-Builder shall preserve and safeguard the area of any incident, accident, illness or injury where the person required emergency medical treatment. The Design-Builder shall secure the area and not allow any material object or property to be altered, changed, moved or removed from the area and post a person at the area to protect it. The Design-Builder shall telephone and "FAX", including a description of the incident, accident, illness or injury, the Owner, the Owner's Project Manager, and Risk Management Unit immediately, and post a person at the accident site to protect it. Safeguarding and protecting the area shall only be abandoned by the Design-Builder upon release by the Owner. The Design-Builder shall provide the Owner a list of witnesses that includes the full name, home address, occupation and telephone number of each person.

E. If, in the performance of the Work, a harmful hazard is created for which appliances or methods of elimination have been approved by regulatory authorities, the Design-Builder shall install, maintain and operate said appliances or methods.

F. The Owner may inspect the job Site at any time without notice to the Design-Builder. If the Owner finds that the Design-Builder is not complying with the provisions of this Article and the applicable provisions of the Contract Documents, the Owner may send written Notice to the Design-Builder to correct any deficiency. If upon re-inspection, the Owner finds the deficiencies have not been corrected, the Owner may, with its own forces or a Separate Contractor, correct any deficiencies and charge back the cost of its own forces or the Separate Contractor, as the case may be, to the Design-Builder as identified in the General Conditions. The Design-Builder cannot pass these additional charges on to the Owner. No action taken under this Section shall be deemed as a basis for any delay claim or any other claim against the Owner by the Design-Builder.

G. Not Used.

Section 14.06 - Environmental Compliance.

Warranty. The Design-Builder warrants that it shall fully comply with the provisions of the Storm Water Pollution Prevention Plan ("SWPPP") (Exhibit BB), the Construction Storm Water Management Plan, the Environmental Management Program (Exhibit Z), and all Environmental Laws applicable to its Work provided to Owner under this Contract, including but not limited to the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and the Resource Conservation and Recovery Act, in each case, as the same may be amended from time to time.

Section 14.07 - Environmental Management Program (EMP) and Permits.

Within sixty (60) Days of the Execution Date of this Contract, Design-Builder shall create a written Environmental Management Program ("EMP") (Exhibit Z) for submission to Owner for its review and approval. The EMP will be maintained by Design-Builder during the course of the Work, will outline specific requirements and activities that will be the primary responsibility of Design-Builder to perform, and will describe how the EMP applies to all activities related to the Work, including the activities of Design-Builder's Subcontractors at the Project Site. The EMP will also include a comprehensive Site Permit compliance matrix, which shall consist of all known Permits and activities required for the construction and initial operation of the Facility. The Site Permit matrix shall contain information on required Permits and what activities trigger the need for these Permits; application preparation time; anticipated agency review and approval time; copies of the completed application; the date the Permit is required; the agency governing the regulated activities; contact information of individuals from each agency if known; and individuals or organizations within the Work who are responsible for completion of the various Permit requirements. The EMP should not be viewed as a static document. Design-Builder is responsible for updates and amendments to the EMP as needed throughout the term of the Work.

Section 14.08 - Site Safety and Security.

A. Responsibility. Unless otherwise provided for in the Contract Documents, Design-Builder shall be solely responsible for the security of all Work prior to Substantial Completion and shall follow the site security requirements

provided by Design-Builder, approved by Owner, and attached hereto as Exhibit N. The presence of Owner's Facility security shall not mean that Owner shall be responsible for protection and security of Design-Builder's Work.

B. Employees. Design-Builder shall be solely responsible for developing and Owner-approved Site security plan and establishing and maintaining a secure access point into the Site security zone at a location designated by the Owner. The access point shall consist of a security facility including turnstiles, video surveillance/recording equipment, and an electronic badging program that are complimentary to, or an identifiable and trackable part of Owner's system. Design-Builder's and its Subcontractors' employees (referred to as "**Personnel**"), shall be required to check in and out of its designated security facility. Design-Builder must notify Owner of all new and laid off Personnel each Day. All Personnel shall be assigned an access card to be used to identify him or her for entrance and exit at the designated security gate. Use of the access card shall commence on the first Day of employment. Personnel shall show proper respect to the Facility security services personnel at all times. All Personnel shall leave the Premises immediately after completing their shift. Congregating in the parking lot or other locations on the Premises shall not be permitted. Owner shall have unrestricted electronic access to all data generated from Design-Builder's video recording and electronic badging systems as requested by Owner.

C. Project Materials and Tools. Design-Builder shall be solely responsible to secure all project and site materials, tools and access control devices from loss or theft, whether it is on-Site or off-Site, including any laydown area that may be provided by Owner and is located off-Site. The presence of Owner's Facility security personnel shall not mean that Owner shall be responsible for protection and security of these assets.

D. Vehicles. Design-Builder shall provide a vehicular management plan, which shall include, but is not limited to, the following: establishing and maintaining a secure vehicle access point into the site security zone at a location designated by the Owner. Design-Builder shall not permit vehicles to drive in and out of the Site except those explicitly designated by Owner. Owner further reserves the right to limit the number of vehicles Design-Builder is allowed to bring on Site. No Design-Builder employees will be allowed to ride in the vehicle through the security gate except the driver.

E. Inspections and Searches. When notified, all Personnel will check in and out with their lunch boxes in an open position for inspection by the security guards. Vehicles, toolboxes, lunch boxes, and other containers shall be subject to an unannounced search at the gate or other location as determined by Owner.

Section 14.09 - Risks Assumed by the Design-Builder.

A. Indemnification. To the fullest extent permitted by Law, the Design-Builder assumes the following risks of performance of the Work and shall defend, indemnify and hold harmless the Owner, the State of New York, Owner's Technical Advisor, Owner's Representative, and Other Owner's Authorized Parties ("**Owner Indemnitees**") from and against such risks and any and all claims, damages, injuries and losses of any kind whatsoever arising or alleged to be caused by, resulting from, arising out of, or occurring in connection with the performance of the Work, excepting only risks, claims, damages, injuries or losses that arise from and to the extent is caused by the negligence, gross negligence or willful misconduct of the Owner Indemnitees that caused the claims, damages, injuries or losses hereinafter set forth:

1. The risk of loss or damage, including direct or indirect damage or loss, of whatever nature to the Work or to any plant, equipment, tools, materials or property furnished, used, installed or received by the Owner, the Owner's Representative, the Design-Builder or any Subcontractor, materialmen or workmen performing services or furnishing materials for the Work. The Design-Builder shall bear said risk of loss or damage until Substantial Completion or until completion or removal of said plant, equipment, tools, materials or property from the Site and the vicinity thereof, whichever event occurs last. In the event of said loss or damage, the Design-Builder immediately shall repair, replace or make good any said loss or damage.
2. The risk of claims by third persons against the Design-Builder or the Owner Indemnitees on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance of the Work, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Design-Builder's operations or presence at or in the vicinity of the Site. The Design-Builder shall bear the risk for all deaths, injuries, damage or losses sustained or alleged to have been sustained prior to Substantial Completion of the Work. The Design-Builder shall bear the risk for all deaths, injuries, damages

or losses sustained or alleged to have been sustained resulting from the Design-Builder's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the Owner.

3. The Design-Builder assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting there from, to all persons, whether employees of the Design-Builder or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the performance of the Work. If any person shall make said claim for any damage or injury, including death resulting there from, or any alleged breach of any statutory duty or obligation on the part of the Owner Indemnitees, or their servants and employees, the Design-Builder shall assume the defense and pay on behalf of the Owner Indemnitees or their servants and employees, any and all loss, expense, damage or injury that the Owner Indemnitees or their servants and employees, may sustain as the result of any claim, provided however, the Design-Builder shall not be obligated to indemnify the Owner Indemnitees or their servants and employees for their own negligence, if any.
4. Workers' Compensation Waiver. To the fullest extent permitted by Laws, Design-Builder expressly: (1) agrees not to assert as a defense the benefit, insofar as the indemnification of the Owner Indemnitees their members, officers, employees, or representatives is concerned, of the provisions of any applicable workers' compensation Law limiting the tort or other liability of any employer on account of injuries to the employer's employees; and (2) assumes liability in accordance with the indemnification provisions of the Contract Documents.
5. The Design-Builder agrees to assume, and pay on behalf of the Owner Indemnitees and their servants and employees, the defense of any action at Law or equity which may be brought against the Owner Indemnitees and their servants and employees. The assumption of defense and liability by the Design-Builder includes, but is not limited to, the amount of any legal fees associated with defending, all costs of investigation, expert evaluation and any other costs including any judgment or interest or penalty that may be entered against the Owner Indemnitees and their servants and employees, in any said action.
6. Safety Regulations. The Design-Builder is advised that the Work of the Contract may impose certain obligations and requirements mandated by the U.S. Department of Labor Occupational Safety and Health Administration regulations, Title 29 CFR Part 1926.62 Lead Exposure in Construction, relative to the potential exposure to lead by its employees. The Design-Builder assumes entire responsibility and liability for complying fully in all respects with these regulations.
7. Design-Builder Environmental Indemnification. The Design-Builder shall indemnify and defend Owner Indemnitees from and against all Losses including, but not limited to, damages for injury or loss of natural resources, spills, and releases arising out of and to the extent of: (i) Design-Builder's provision of services to Owner relating to Hazardous Materials; (ii) the transporting, handling, storage, treatment, release, threatened release or disposal by Design-Builder, its Subcontractors, or any third party, of any equipment, substances, or other materials brought onto the Site or used by Design-Builder or any Subcontractor during the course of performing the Work; (iii) Design-Builder's negligence or willful misconduct with respect to the Hazardous Materials, including the exacerbation of Pre-Existing Hazardous Conditions; (iv) Design-Builder's continuing presence or performance of the Work at any affected area after it has knowledge or should have knowledge of the presence of such Hazardous Materials in such area and before they have been disposed of, abated or removed; (v) or Design-Builder's failure to comply with its Hazardous Materials obligations under the Contract Documents.
8. Professional Liability. Design-Builder agrees to the fullest extent permitted by Law to indemnify and hold harmless Owner Indemnitees against all claims, damages, injuries or losses to the extent caused by or resulting from any negligent acts or omissions of Design-Builder in the performance of design and engineering services under the Contract Documents.
9. Patent, Copyright, and Trade Secret Indemnity. Design-Builder warrants and represents that any Material, apparatus, process, technology know-how, and the like or any part thereof used or installed pursuant to, or in connection with, the Contract Documents does not and will not violate or infringe any copyright, trademark, service mark, patent or invention, trade secret, or other intellectual process, technology, property, or

proprietary right of any third party. Design-Builder agrees to indemnify, defend, and hold Owner and any other Owner Indemnitee harmless and, at Design-Builder's own cost and expense, to defend any action, whenever instituted, brought against Owner Indemnitees, founded upon the claim that any such article, process, or product or any part thereof, infringes any such patent or copyright from and against any and all Losses that any Owner Indemnitee may hereafter suffer or pay out by reason of the use or installation of such article, process, or product and, any infringement of a patent or copyright, or the misappropriation of any trade secret protected under the Laws based upon the Work designed or used by Design-Builder or any of its Subcontractors.

- a. Patent, Copyright and Trade Secret Infringement. Design-Builder shall, at its sole expense, promptly defend against any patent, copyright, or trade secret infringement claim, demand, action, or proceeding, unless directed otherwise by Owner, provided that Owner shall have notified Design-Builder upon becoming aware of such claim, demand, action, or proceeding and provided further that Design-Builder's aforementioned obligations shall not apply to Materials, equipment, or processes furnished or specified by Owner.
- b. Trade Secret Misappropriation. Design-Builder shall, at its sole expense, promptly defend against any claim, demand, action, or proceeding relating to the misappropriation of Trade Secrets, unless directed otherwise by Owner, provided that Owner shall have notified Design-Builder upon becoming aware of such claim, demand, action, or proceeding and provided further that Design-Builder's aforementioned obligations shall not apply to Materials, equipment or processes furnished or specified by Owner.
- c. Substitution by Design-Builder. Design-Builder shall have the right, in order to avoid any claims or damages for infringement or misappropriation, to substitute, at its expense, any non-infringing Materials or processes, or to modify such infringing Materials or processes of the Work so they become non-infringing, or to obtain the necessary licenses to use the infringing Materials or processes provided that such substituted and modified Materials or processes meet all the requirements and are subject to all the provisions of the Contract Documents.
- d. In the event of any injunction or legal action serving to stop the Work, Owner shall have the right to require Design-Builder to substitute such other articles of like kind as will make it possible to proceed with and complete the Work, and all costs and expenses occasioned thereby shall be borne by Design-Builder.
- e. In the event of any Design-Builder liability related to this Section, Owner may withhold from any payment due or thereafter to become due to Design-Builder, an amount sufficient in its judgment to protect and indemnify Owner Indemnitees for any such claim or damage, unless Design-Builder furnishes a surety bond satisfactory to Owner, providing for such protection and indemnity to Indemnitees, which bond shall be furnished by Design-Builder at Design-Builder's own cost and expense within five (5) Days after written demand has been made therefor.

B. The Design-Builder's indemnity obligations under the Contract Documents shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Design-Builder shall notify its insurance carrier within twenty four (24) hours after receiving a notice of loss or damage or claim from the Owner or Owner's Client. The Design-Builder shall make a claim on its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner or the Client including those of being an additional insured where applicable.

C. Neither final acceptance of the Work nor making any payment shall release the Design-Builder from the Design-Builder's indemnity obligations under the Contract Documents. The enumeration elsewhere in the Contract of particular risks assumed by the Design-Builder or of particular claims for which the Design-Builder is responsible shall not be deemed to limit the effect of the indemnity provisions of the Contract Documents or to imply that the Design-Builder assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Design-Builder or particular claims for which the Design-Builder is responsible shall be deemed to limit the risks which the Design-Builder would assume or the claims for which the Design-Builder would be responsible in the absence of said enumerations

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

ARTICLE 15 - INSURANCE AND BONDS

Section 15.01 - General Insurance Provisions Contract.

A. The Design-Builder and Subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the Owner and of the insurance companies issuing such policies.

B. Unless otherwise permitted by the Contract Documents, including this General Conditions, Article 15, Design-Builder and its Subcontractors shall maintain in force all insurance required to be procured by them under this Contract until Final Completion by the Owner except where this Contract requires an insurance policy to be maintained for a period beyond issuance of the Certificate of Final Completion in which case the Design-Builder and its Subcontractors shall maintain such insurance policy in force for the specified period beyond Final Completion. Owner reserves the right to implement a Contractor Controlled Insurance Program (CCIP), and Design-Builder agrees to cooperate with Owner and provide Owner a credit for the full value of those insurance premiums that Design-Builder no longer incurs as a result of the implementation of a CCIP.

C. All insurance required to be procured and maintained by the Design-Builder and Subcontractors under this Contract shall be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services with an A.M. Best financial strength rating of no less than "A-" and financial size rating no less than Class "VII" showing policies carried and the limits of coverage as stated in this General Conditions, Article 15, or meet such other requirements as are acceptable to the Owner.

D. All insurance policies required to be procured and maintained by the Design-Builder and Subcontractors under this Contract shall include a provision or endorsement that the policy shall not be canceled, materially changed or not renewed without at least thirty (30) Days written notice to the Owner except for non-payment in which case notice to the Owner shall be provided as required by Law.

E. All insurance policies required to be procured and maintained by the Design-Builder and Subcontractors under this Contract shall include a provision or endorsement that at least thirty (30) Days prior to the cancellation, non-renewal, or expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the Owner. Copies of all policies or other coverage documents (to include Subcontractors and suppliers) shall be provided to Owner upon written request.

F. All insurance policies required to be procured and maintained by the Design-Builder and its Subcontractors under this Contract shall be written on an occurrence basis except where this Contract explicitly allows otherwise. Owner and any other third party Owner reasonably requires shall be named as an additional insured on all policies (except Worker's Compensation and Professional Liability).

G. All insurance policies required to be procured and maintained by the Design-Builder and its Subcontractors under this Contract shall include a provision or endorsement that the Owner and the Client shall not be responsible for any claim expenses and loss payments within the deductible or the self-insured retention and that the Design-Builder or its Subcontractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

H. All insurance policies required to be procured and maintained by the Design-Builder and Subcontractors under this Contract shall include a provision or endorsement that there shall be no right of subrogation against the Owner, Client, and

any other third party Owner reasonably requires. If any of the Design-Builder's policies or any of the policies of any Subcontractor prohibit such a waiver of subrogation, the Design-Builder or Subcontractor shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the Owner.

I. Each liability and protective liability insurance policy required to be procured and maintained by the Design-Builder and Subcontractors under this Contract will contain a severability of interest clause and shall include a provision or endorsement that the coverage afforded the Owner and the Client under such policy shall be primary and non-contributory and that such policy shall be primary over any other insurance policy or self-insurance available or maintained by the Owner or by the Client. Any other insurance policy maintained by the Owner or the Client shall be in excess of and shall not contribute with the Design-Builder's or its Subcontractor's insurance policy, regardless of the "other insurance" clause contained in the Owner's, Client's or Owner's Representative's own policy of insurance or the Design-Builder's or its Subcontractor's insurance policies.

J. Any other Contract Document, but excluding Change Orders, may require any of the Design-Builder and Subcontractors to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the Owner or the Client.

K. Notwithstanding any other provision of the Contract Documents, the Owner, in a Change Order or Contract Amendment, may require the Design-Builder and any or all Subcontractors to provide, at the expense of the Owner, any other form or limit of insurance in addition to the insurance requirements of the original Contract necessary to secure the interests of the Owner and the Client.

L. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Client, the Design-Builder, or its Subcontractors shall in any way be construed or deemed to limit, discharge, waive, or release the Design-Builder or any Subcontractor from any of the obligations or risks accepted by the Design-Builder and its Subcontractors or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless, and procure insurance for the Owner and the Client.

M. All provisions of the Contract Documents are to the fullest extent permitted by Law. One purpose of this Contract is to allocate, to the fullest extent permitted by Law, all risk of loss to the Design-Builder, each Subcontractor and the insurers of each. Each insurance company from which Owner or Client has directly purchased an insurance policy is a third-party beneficiary of the Design-Builder's and each Subcontractor's obligations to procure insurance.

N. The insurance policies and all amounts of insurance coverage specified herein are required minimums (or as required by Law, whichever is greater) and shall not in any manner limit or qualify the liabilities and obligations assumed by Design-Builder under the Contract unless otherwise expressly indicated. Design-Builder shall be solely responsible for determining the appropriate type and amount of insurance coverage, if any, Design-Builder wishes to obtain or maintain in excess thereof or in addition thereto. Design-Builder may, with Owner's approval, utilize a Contractor Controlled Insurance Program (CCIP) and mandate the participation of Subcontractors. Design-Builder is responsible for ensuring that each Subcontractor obtains and maintains in the required amount each type of insurance policy required by this Contract and that such insurance policy provides the Owner and Client with the coverage required by this Contract.

O. Owner may, at its sole option, obtain any insurance required to be maintained by Design-Builder or its Subcontractors under this Contract if not obtained or maintained by such Person and, in such event, Design-Builder shall reimburse Owner upon demand for the cost of such insurance.

P. Design-Builder agrees and acknowledges that, because the Design-Builder (and not the Owner or Client) is responsible for performance of the duties and obligations set forth in this Contract for completion of the Project, the Design-Builder, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the Owner and Client.

Q. In addition to Builders Risk claims, Design-Builder shall furnish Owner with copies of any accident/incident reports sent to Design-Builder's insurance carriers covering accidents or incidents occurring in connection with or as a result

of the performance of the Work under the Contract Documents or its receipt or notice of any claim by a third party, or any occurrence that might give rise to such a claim. Design-Builder shall report promptly to Owner any accident, incident, or unusual occurrence during performance of the Work at the Site, including personal injury or death to any employee or any member of the public, or any damage to any of Owner's property, the Site or adjacent property. Reports of personal injury or death to any Person shall be made to Owner's Authorized Representative within three hours. Design-Builder shall submit a copy of all accident reports to Owner's Project Safety Manager and Owner's Authorized Representative within twenty-four hours after an accident.

Section 15.02 - Submission of Insurance.

A. Owner will not execute the Contract unless the Design-Builder shall submit to the Owner proof of insurance in such form and substance acceptable to Owner, indicating the Project and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Design-Builder shall provide a copy of each insurance policy required by the Contract certified by the insurance carrier as a true and complete copy. The Owner may request such a certified copy of a policy at any time and may make such requests as often as the Owner deems necessary. Each request may be for a certified copy of one or more policies. In addition, the Design-Builder shall provide copies of certificates of insurance to the Owner's Representative, if applicable. The insurance and endorsements required by this General Conditions, Article 15 shall be delivered to Owner prior to commencement of Work at the Site and on each issuance anniversary while such insurance is in effect.

The Design-Builder shall submit insurance certificates (Accord 25 and 855, or equivalent as determined by the Owner), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the Owner and Client, and such other documents requested by the Owner as proof of insurance for the Design-Builder. All insurance submittals must be approved by the Owner prior to the Design-Builder's commencement of Work.

B. Upon the Owner's request, the Design-Builder shall submit to the Owner proof of insurance for one or more Subcontractors, in such forms as requested and deemed acceptable by the Owner, indicating the Project and showing evidence of all insurance required under the Contract. Upon the Owner's request, the Design-Builder shall provide a copy of each insurance policy of the Subcontractor or Subcontractors required by the Contract and certified by the insurance carrier as a true and complete copy. The Owner may request such a certified copy of a policy at any time and may make such requests as often as the Owner deems necessary. Each request may be for a certified copy of one or more policies for one or more Subcontractors. In addition, the Design-Builder shall provide copies of certificates of insurance to the Owner's Representative, if applicable. Design-Builder, from the Effective Date of this Contract and through the date on which Final Completion is achieved, shall cause all Subcontractors, to obtain and maintain insurance comparable in form and coverage amounts listed. Design-Builder may permit any such Subcontractor to obtain and maintain insurance coverages with lower limits to the extent that Owner has approved such coverages and such lower limits are customary for contractors providing work of the type and scope to be provided.

C. Upon request of the Owner, the Design-Builder shall submit insurance certificates (Accord 25 and 855, or equivalent as determined by the Owner), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the Owner and Client, and such other documents requested by the Owner as proof of insurance for a Subcontractor. Owner may request proof of insurance for one or more Subcontractors at the same or at different times, and Owner may request proof of insurance for a particular Subcontractor as often as Owner determines is necessary.

Section 15.03 - Insurance Provided by Design-Builder.

A. The Design-Builder shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract all of the insurance required under this Contract. Subject to the terms of Section 15.01, above, each Subcontractor shall procure, at its sole cost and expense, prior to the Design-Builder submitting to the Owner the name of such Subcontractor and prior to such Subcontractor commencing performance of any of the Work, and each Subcontractor shall maintain in force at all times required by this Contract all of the insurance required under this Contract. The insurance that the Design-Builder and each Subcontractor shall procure and maintain under this Contract includes, but is not limited to, the following:

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1. Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided in accordance with statutory limits and evidenced by one of the following certificates (**Acord certificates are not acceptable**):
 - a. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
 - b. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
 - c. GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Design-Builder's Group Self Insurance Administrator shall provide a completed form.
 - d. SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Design-Builder's Self Insurance Administrator shall provide a completed form.
2. Disability Benefits insurance. Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:
 - a. DB-120.1 (September 15, or most current version) – Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
 - b. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
 - c. CE 200 – Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by Law. DASNY will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at <http://www.wcb.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore a new form shall have to be completed prior to award of any subsequent contract.
3. Commercial General Liability (CGL) insurance. The CGL insurance policy shall cover the liability of the Design-Builder or Subcontractor for bodily injury, property damage, and personal/advertising injury arising from performance of the Work or operations or presence at or in the vicinity of the Site of the Contract. The policy shall utilize ISO form CG 00 01 12 07 or a form providing equivalent coverage. The limits under such policy shall not be less than the following for the Design-Builder: the limit for each occurrence shall be at least \$50,000,000; the general aggregate limit shall be at least \$50,000,000; the personal and advertising injury limit shall be at least \$25,000,000; and the Products Completed Operations limit shall be at least \$25,000,000. The limits under such policy shall not be less than the following for all Subcontractors with Subcontracts in excess of \$25,000,000: the limit for each occurrence shall be at least \$5,000,000; the general aggregate limit shall be at least \$5,000,000; the personal and advertising injury limit shall be at least \$2,000,000; and the Products Completed Operations limit shall be at least \$5,000,000. The limits under such policy shall not be less than the following for all Subcontractors with Subcontracts of less than \$25,000,000: the limit for each occurrence shall be at least \$2,000,000; the general aggregate limit shall be at least \$2,000,000; the personal and advertising injury limit shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$2,000,000. Products/completed operations liability coverage shall be maintained for three (3) years after the date on which Final Completion is achieved. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
 - a. If the Design-Builder or Subcontractor proposes the use of a policy other than the ISO form CG 00 01 12 07, the Design-Builder or Subcontractor shall provide the proposed policy to the Owner which will

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determine whether the proposed policy provides equivalent coverage. The Design-Builder or Subcontractor shall pay Owner any attorney fees and other costs incurred by Owner in determining whether the proposed policy provides equivalent coverage. Owner will select the attorney providing advice on the proposed policy.

- b. ISO Endorsement Forms CG 20 10 11/85 and CG 20 37 10 01, or their equivalents, specifically naming as additional insureds the Owner Indemnitees and other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents and for form CG 20 37 10 01 or its equivalent, specifically listing the Project location.
- c. If the Design-Builder or Subcontractor proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 11/85 and CG 20 37 10 01, the Design-Builder or Subcontractor shall provide the proposed endorsement(s) to the Owner which will determine whether the proposed endorsements provide equivalent coverage. Design-Builder and Subcontractor shall pay Owner any attorney fees and other costs incurred by Owner in determining whether the proposed endorsements provide equivalent coverage. Owner will select the attorney providing advice on the proposed endorsements.
- d. Additional insured status for Owner Indemnitees shall apply during the Products/Completed Operations phase as well as during the course of performance of the Work.
- e. Excavation, Collapse and Underground Hazards.
- f. Independent contractors/subcontractors.
- g. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Contract, and covering tort liability of another assumed in a contract.
- h. Products and completed operations coverage for a term no less than three years commencing upon issuance by the Owner of the Certificate of Final Completion.
- i. Premises liability.
- j. Defense and/or indemnification obligations, including obligations assumed under this Contract.
- k. Cross liability for additional insureds.
- l. Design-Builder and Subcontractor Means and Methods.
- m. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
- n. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit separately to the Project.
- o. The maximum deductible or self-insured retention shall be \$50,000.
- p. No endorsement or provision in the policy shall exclude coverage for Owner or the Client for any liability when the injured party is an employee of Design-Builder or any Subcontractor.
- q. No endorsement or provision in the policy shall require privity of contract between the Owner and Subcontractor or between the Client and the Design-Builder or Subcontractor in order for the Owner or the Client to have coverage as an insured on such insurance policy.
- r. If the Design-Builder or Subcontractor must provide a Railroad Protective Liability insurance policy, the CGL exclusion for work within fifty (50) feet of railroad property must be deleted.

- s. No endorsement or provision in the policy shall have a height limitation or exclusion.
 - t. No endorsement or provision in the policy shall have a classification exclusion as respects work performed for the Owner and Client.
 - u. Owner, Client, and Owner's Representative shall be covered for any and all liability arising out of acts or omissions of Design-Builder and any Subcontractor.
4. Commercial Automobile Liability insurance. The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least \$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.
 5. Umbrella and/or Excess Liability insurance. When the limits of the CGL, Commercial Auto Liability or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding paragraphs, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding paragraphs. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL, Commercial Automobile Liability and Employers Liability insurance policies required in the preceding paragraphs. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the Owner or the Client or any other additional insured. Any other insurance maintained by the Owner, the Client, or any other additional insured shall be in excess of and shall not contribute with the Design-Builder's or Subcontractor's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the Owner's or Client's or other additional insured's own policy of insurance or the Design-Builder's or Subcontractor's insurance policies. The excess policies be "following form" over and shall not contain endorsements which restrict coverage as set forth in the Workers Compensation (with respect to Employers Liability only), CGL, and Automobile Sections above.
 6. The Design-Builder shall secure, pay for, and maintain property insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Design-Builder. The requirement to secure and maintain such insurance is solely for the benefit of the Design-Builder. Failure of the Design-Builder to secure such insurance or to maintain adequate levels of coverage shall not render the Owner, the Client and, if applicable, other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents or their agents and employees responsible for any losses; and the Owner, Client and, if applicable, other entities specified as additional insureds on the sample certificate of insurance provided by the Owner in the bidding documents and their agents and employees shall have no such liability.

B. Notwithstanding any other provision of the Contract to the contrary and to the fullest extent permitted by Law, Design-Builder shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the Owner or the Client in any action brought by or against the Owner or the Client concerning insurance coverage owed to Owner or the Client to any insurer for which Design-Builder or any Subcontractor represented that the Owner and Client would be an insured or would benefit in any way if a claim was brought against Owner and Client.

Section 15.04 - Other Insurance Provided by Design-Builder.

The Design-Builder and each Subcontractor shall also procure and maintain as required by General Conditions, Sections 15.01 (B) and 15.03 (A) the following insurance:

A. United States Longshore and Harbor Workers' Compensation Act and Jones Act: When, to perform the Work, the Design-Builder or any Subcontractor is engaged in activities on or near a shoreline or on or near the navigable waterways of the United States or when any part of the Work is connected to water-related activities, the Workers' Compensation policy referenced above of the Design-Builder and any such Subcontractor shall be endorsed to provide Jones Act and United States Longshore and Harbor Workers' Act coverage.

B. Design-Builder's Pollution Liability Insurance: When the Work includes abatement, removal, repair, replacement, enclosure, encapsulation or disposal of any pollutants, which include but are not limited to, petroleum, petroleum products, mold, asbestos, lead or any other Hazardous Material, the Design-Builder or any Subcontractor performing Work involving any of the pollutants, shall procure and maintain in full force and effect pollution legal liability insurance with limits of at least \$2,000,000 per occurrence and in the aggregate providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured and coverage that encompasses at least the following:

1. Endorsement specifically naming as additional insureds: the Owner, the Client, and if applicable, other entities specified on the sample certificate of insurance provided by the Owner.
2. The policy provisions required by General Conditions, Section 15.01.
3. A maximum deductible or self-insured retention of \$50,000.
4. Coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the Owner or the Client arising from the Work.
5. Coverage shall be provided until three years after the Owner issues the Certificate of Final Completion.

Not Used.

C. Professional Liability Insurance: Each of the Design-Builder and any Subcontractor performing any Work which involves delegation of design shall procure and maintain Error and Omissions Liability Insurance for the delegated design Work. The Error and Omissions Liability Insurance for the Design-Builder shall have a minimum insurance limit of not less than twenty (\$20,000,000) million dollars issued to and covering damage for liability imposed on the Design-Builder or Subcontractor by this Contract or Law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. The Error and Omissions Liability Insurance for Subcontractors shall have a minimum insurance limit of not less than two million dollars (\$2,000,000) issued to and covering damage for liability imposed on the Subcontractor by this Contract or Law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. This insurance may be issued on a claims-made professional liability policy form and shall be maintained for no less than three (3) years after issuance by the Owner of the Certificate of Final Completion. The policy, at the sole expense of the Design-Builder or Subcontractor, shall have extended Discovery Clause coverage of at least three (3) years after issuance by the Owner of the Certificate of Final Completion if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.

D. Marine Protection & Indemnity Insurance and Hull & Machinery Insurance: Each of the Design-Builder and any Subcontractor performing any Work on navigable water or connected to water-related activities or with marine operations, shall procure and maintain Marine Protection & Indemnity insurance and Hull & Machinery insurance. Hull & Machinery coverage shall be provided for the total value of the watercraft and equipment used in the Work on navigable water or connected to water-related activities or with marine operations. The Design-Builder shall obtain a Marine Protection & Indemnity Liability insurance policy for all navigable water, water-related or marine activities or operations under the Contract with a minimum limit of \$2,000,000. The Owner, the Client and, if applicable, other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents shall be additional insureds on the Marine Protection & Indemnity Liability insurance policy. The Marine Protection & Indemnity Liability insurance policy shall provide coverage that encompasses at least the following:

1. The policy provisions required by General Conditions Section 15.01.
2. A maximum deductible or self-insured retention of \$50,000.
3. Coverage shall be provided until three years after the Owner issues the Certificate of Final Completion.
4. Endorsement specifically naming as additional insureds: the Owner, the Client, and, if applicable, other entities specified on the sample certificate of insurance provided by the Owner in the bidding documents.

Section 15.05 - Stop Work Order – Insurance.

- A.** All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The Design-Builder shall be responsible to submit updated insurance certificates thirty (30) Days prior to any insurance certificate expiration date.
- B.** Failure of the Design-Builder to maintain the insurance required by the Contract or to provide the Owner with evidence of valid and in-force insurance coverage required by the Contract shall result in a Stop Work Order pursuant to Contract, Article 11 – Termination or Suspension and/or withholding of payment to the Design-Builder.
- C.** At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Design-Builder shall immediately cease Work on the Project. The Design-Builder shall not resume Work on the Project until authorized to do so by the Owner.
- D.** Any delay or time lost as a result of the Design-Builder not having proper insurance required by this General Conditions, Article 15 or not providing the Owner with evidence of valid and in force insurance required by the Contract shall not give rise to a delay claim or any other claim against the Owner. Further, the Design-Builder may be liable to other contractors for costs incurred by reason of the Design-Builder’s failure to provide insurance.

Section 15.06 - Builder’s Risk.

- A.** Not Used.
- B. Design-Builder-provided Builder’s Risk.** The Design-Builder shall procure and maintain, at its sole cost and expense, Builder’s Risk insurance, or when otherwise specified, as provided below.
1. The Design-Builder shall maintain until the date of Substantial Completion, an All Risk Builder’s Risk Completed Value Form insurance policy, with coverage for at least the value of the Work of the Contract except for excavation work, planting and seeding, and Work buried in the ground other than wiring and walking tunnels, but including debris removal costs and architect, engineering and other costs to evaluate damage and provide any design or other services necessary to correct or minimize damage in the event of damage to the Work covered by the policy or such higher amount of coverage as required by the Owner in this Contract. Debris removal costs shall include demolition as may be necessary by the operation of any Law, ordinance or regulation. The policy shall cover property of the Owner or Client when in the Design-Builder’s care, custody or control. The policy shall name as insureds the Owner, Client and Design-Builder and shall include such soft costs coverage for the Owner and Client as specified in this Contract. When applicable, upon request of the Design-Builder and the prior written approval of the Owner, an Installation Floater or the Design-Builder’s Interest Completed Value Form may be used instead of the All Risk Builder’s Risk Completed Value Form. The extended coverage endorsement may include a loss deductible of \$10,000 or less. The Design-Builder shall bear all losses up to and including the deductible provision.
 2. Coverage shall also include sub limits for equipment, material and other property in transit or in storage on or off the Site. Specific higher limits of coverage for property in transit or storage, at Design-Builder’s expense, may be required by the Owner due to circumstances of the Project.
 3. Each Builder’s Risk insurance policy shall include the following endorsement:

“It is made a condition of this insurance that until the Owner issues the Notice of Substantial Completion to the Design-Builder, occupancy of the premises shall not require consent of the insurer, nor shall such occupancy be the basis for a rate adjustment.”

4. Builder’s Risk insurance policy shall name DASNY as the sole Loss Payee, as its interests may appear and shall run until the date of Substantial Completion. Policies expiring on a fixed date before Substantial Completion shall be renewed not less than thirty (30) Days before such expiration date. Such policy shall not be changed by endorsement without the knowledge and consent of the Owner and in particular, shall provide that no notice of cancellation by the insurer shall be effective until sixty (60) Days after such notice is received by the Owner. If the policy is issued by a mutual insurance company, the policy shall provide that the Owner and the Client shall not be liable for any premium or assessment under the policy; the Design-Builder shall be responsible for all premiums and assessments.
5. The Owner may withhold the Design-Builder’s payment for Work which is required to be insured until the original binder or policies for the Builder’s Risk insurance are provided to the Owner.

Section 15.07 - Contractor’s CCIP Obligations.

A. The premium for the CCIP shall be charged to and paid as a Cost of Work by Owner (“**CCIP Costs**”). Premium payments will be billed in installments with a [REDACTED] % deposit with the first Application for Payment after the GMP Amendment is executed, followed by [REDACTED] equal monthly installments. Should the scope of Work change during the course of construction, the mutually agreed upon CCIP rate set forth in this Section of the Agreement will be applied and such additional CCIP cost shall be charged no earlier than the next Application for Payment.

B. The total charge to be paid by Owner for the CCIP shall be equal to the rate of [REDACTED] percent ([REDACTED] %) of the total Cost of Work paid by Owner for Work included in the GMP Amendment (such Cost of Work, “**Original Construction Cost**”), plus the rate of [REDACTED] percent ([REDACTED] %) of the total Cost of Work (other than Insurance Fees) paid by Owner for Work added by Change Order after execution of the GMP Amendment (such Cost of Work, “**Added Construction Cost**”). These agreed-upon rates include premiums, reserves for losses, and administrative expenses and are not subject to adjustment based on actual costs.

C. Prior to and as a condition of the Final Payment made to Contractor under this Contract, Contractor shall deliver to Owner a CCIP premium reconciliation showing the total Original Construction Cost, the total Added Construction Cost, the total CCIP premium due for the same and the total amount paid by Owner. If the total paid by Owner for the CCIP is less than the sum of [REDACTED] percent ([REDACTED] %) of the Original Construction Cost plus [REDACTED] percent ([REDACTED] %) of the Added Construction Cost, Owner shall pay the difference as part of such Final Payment, subject to Owner’s withholding rights under the Contract Documents. If the total amount paid by Owner for the CCIP is more than the sum of [REDACTED] percent ([REDACTED] %) of the Original Construction Cost plus [REDACTED] percent ([REDACTED] %) of the Added Construction Cost, Contractor shall pay the difference to Owner or, at Owner’s election, Owner may offset the overpayment against amounts otherwise due to Contractor. Owner shall be entitled to a deductive Change Order reducing the GMP by the amount of such overpayment.

Section 15.08 - General Bonding Provisions.

A. Payment and Performance Bonds. Design-Builder shall provide performance and payment bonds substantially in the form of Exhibit Q and as approved by Owner in an amount equal to the GMP guarantying the Design-Builder’s performance on the Project and prompt payment of all amounts to be paid by Design- Builder for labor and materials, and/or the due and prompt performance of all of the terms of this Contract on the part of Design-Builder to be performed, such bonds to be for the benefit of Owner. The Bonds Fee due and owing prior to the Effective Date shall be reconciled and included as a line item of the GMP upon the Effective Date. Prior to Final Completion, all remaining Bonds Fee charges shall be reconciled.

B. Requirements Generally. Before the Effective Date, the Design-Builder shall provide to Owner and other such parties Owner may designate from time to time, each of the Performance Bond and the Payment Bond (and copies of the paid premium receipts) with a penal sum equal to the GMP or, if the GMP is exceeded by the Design-Builder, the

Construction Price value, as financial security for the faithful performance and payment of its obligations hereunder. The penal sum of each of the Performance Bond and the Payment Bond shall be adjusted on or before the Effective Date to an amount equal to the GMP (or a replacement Performance Bond and Payment Bond in such amount shall be provided). The amount of the Performance Bond and Payment Bond shall be increased by the Design-Builder to reflect any Change Orders adjusting the GMP at the time such adjustment is implemented by the Parties and as a condition to its entitlement to the adjustment. In addition, the amount of the Performance Bond and Payment Bond shall be increased by the Design-Builder to reflect any adjustments necessary to account for situation where the GMP is exceeded by the Design-Builder. The Performance Bond and the Payment Bond shall be substantially in the forms set forth in Exhibit Q and shall be issued by a surety company: (1) approved by the Owner having a rating of at least "A-" in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "**Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies;**" and (3) holding a certificate of authority to transact surety business in the State of New York by the NYS Department of Financial Services. The Payment Bond shall be security for the payment of all persons, subcontractors and vendors supplying labor and material in the prosecution of the Work and shall remain valid and open until Final Completion. The Performance Bond shall secure the performance of all of the Work, including the Warranty Work, and remain open until the expiration of the Warranty Callback Period. To the extent required by Laws, the Design-Builder, at Owner's expense, shall provide such further performance and payment bonds as may be necessary under Laws to secure the performance of any Warranty Work; and such performance and payment bonds shall comply with the requirements of Laws and this Section. An approved Performance Bond by Owner is a prerequisite condition for the first payment.

C. Monitoring of Sureties. The Design-Builder shall be responsible throughout the Project for monitoring the financial condition of any surety company issuing bonds under this Contract and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Article. In the event the rating of any issuing surety company falls below such minimum level, or if any surety company is declared bankrupt or becomes insolvent or has its right to do business in the State of New York terminated, the Design-Builder shall promptly notify the Owner of such event and shall promptly take steps to ensure continued compliance with this Article by furnishing or arranging for the furnishing of a compliant substitute or additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the Owner agrees to accept the surety company that no longer satisfies the minimum rating level specified above, or agrees to an alternative method of assurance. Upon such notice by the Design-Builder of such an event, the Owner shall not unreasonably withhold its approval of such assurance. The Design-Builder shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner. If at any time the Owner shall become dissatisfied with any surety or sureties upon the performance bond or the payment bond, or if for any other reason said bonds shall cease to be adequate security to the Owner, the Design-Builder shall, within five (5) Days after notice from the Owner to do so, substitute an acceptable bond or bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Design-Builder shall pay the premiums on said bond or bonds. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond or bonds to the Owner.

ARTICLE 16 - GENERAL PROVISIONS OF THE CONTRACT

Section 16.01 - General Law Provisions.

A. Applicable Law. The Laws of the State of New York shall govern the Contract, and Design-Builder and its Subcontractors shall comply fully with all applicable provisions of the Laws of the State of New York, the United States of America, and with all applicable rules and regulations, adopted or promulgated, by agencies or municipalities of the State of New York or the United States of America. The Design-Builder's and its Subcontractors' attention is specifically called to the applicable rules and regulations, codes, and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The Design-Builder shall report on compliance to the Owner or Owner's Representative.

B. Incorporation of Laws. Each and every provision of Law and clause required by Law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and shall be enforced as though so included therein.

C. Building Code. The Design-Builder shall comply fully with all applicable Laws, rules and regulations, and as applicable, including the Building Code of New York State.

D. Design-Builder Licenses. Design-Builder shall maintain, and shall require all Subcontractors to maintain, all applicable contractors' licenses required by Laws.

Section 16.02 - Codes.

A. Laws, Codes, and Standards. The Laws, codes, and standards referenced in the Contract Documents establish minimum requirements for the Work. In instances where the Contract Documents do not specifically reference codes or standards, the normally applicable codes and standards for the relevant Work shall be followed by Design-Builder. Design-Builder shall not deviate from the applicable codes and standards, including Prudent Industry Practice, referenced in the Contract Documents without the written consent of Owner. Design-Builder will notify Owner promptly upon discovery of any requirement contained in the Contract Documents that does not meet the minimum requirements for the Work as prescribed by this Section. Reference to known standards of any technical society, organization, or association, or to Laws or codes of local, state, or federal authorities means the latest edition of such standard, Law or code published and in effect on the Effective Date as well as those enacted or adopted but not yet in effect as of the Effective Date, to the extent such standards will be applicable to the Work. In the event that applicable codes, Laws, or standards are modified after the Effective Date, Design-Builder shall advise Owner of such modification and the provisions of General Conditions Article 7 shall apply to determine whether a Change Order is necessary due to the impact of such modification. Notwithstanding the foregoing, if the Contract Documents indicate standards that are higher than those set forth in the Laws, codes and standards, such higher standards shall apply. Design-Builder further agrees to comply with the following:

1. All provisions of Executive Order 11246, as amended by Executive Order 11375 and all rules, regulations, and relevant orders of the Secretary of Labor related to equal employment opportunity as in effect on the date of this Contract, including without limitation, the equal opportunity requirements set forth in 41 C.F.R. 60-300.44;
2. All provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 2012) and all rules, regulations, and relevant orders related to employment of Vietnam veterans as in effect on the date of this Contract, including without limitation, the affirmative action clause set forth at 41 C.F.R. 60-250.4;
3. All provisions of the Rehabilitation Act of 1973, as amended, and all rules, regulations, and relevant orders related to employment of a Person with a Disability as in effect on the date of this Contract, including without limitation, the equal opportunity clause set forth at 41 C.F.R. 60-741.5(a); and
4. All provisions of Executive Order 13496 and 29 CFR Part 471, Appendix A to Subpart A, requiring the posting of the "**Employee Rights Under the National Labor Relations Act**" notice.

B. Compliance with Certain Laws. Notwithstanding anything to the contrary contained herein, no Party shall be required to take any action or perform any Work hereunder that would result in the violation of any Laws, codes, rules, regulations, by-laws, decrees, orders or treaties of the United States of America including U.S. anti-boycott Laws, the U.S. Foreign Corrupt Practices Act, and Laws and regulations pertaining to import and export control and sanctions. In furtherance of the foregoing (and not by way of limitation), in the performance of this Contract, both Parties agree to comply with all applicable U.S. import and export control Laws, including the Export Administration Regulations and those controls administered by the Department of Energy (including section 10 CFR Part 810 of the US Department of Energy Regulations). If required under these Laws, authorization may be required before services are performed under this Contract. The Parties acknowledge that it may be necessary to disclose the existence and substance of this Contract, including the identity of the Parties, the technology, and the Work, to the appropriate governmental officials of the United States as is reasonably necessary or advisable to ensure compliance with import and export control legislation and regulations, and each Party agrees to fully cooperate in such effort.

C. Unless otherwise directed by Owner, the Design-Builder shall comply with all applicable codes and regulations required by Law. Without limiting the generality of the foregoing, compliance with codes and regulations shall include, but shall not be limited to, those of the following which are applicable:

1. Administrative Codes;
2. the State Building Code, NYS Uniform Fire Prevention and Building Code, latest edition; and
3. If Federal Aid is obtained for any facilities described herein, then any and all regulations imposed by the participating Federal Agency shall be complied with in the performance of this Contract.

Section 16.03 - Diesel Emissions Reduction.

A. The Design-Builder shall certify that heavy duty vehicles, as defined in the NYS Environmental Conservation Law (ECL) section 19-0323 and Title 6 of the New York Codes Rules and Regulations 248 (6 NYCRR 248), will comply with the rules, regulations and provisions pursuant to ECL section 19-0323, and 6 NYCRR 248, which requires the use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel to the extent required by Law unless specifically waived by the NYS Department of Environmental Conservation (DEC). Qualification for a waiver will be the responsibility of the Design-Builder.

B. Annually, as required by DEC, but no later than March 1st, the Design-Builder shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Design-Builder's Annual Report Form, found on the DEC website <http://www.dec.state.ny.gov> for vehicles used on the Project for the preceding calendar year.

C. The Design-Builder shall certify to the Owner, and submit with each Application for Payment, the Design-Builder and Subcontractor Certifications form, which states that the Design-Builder agrees to comply with the provisions of Section 16.02.

Section 16.04 - State and Federal Labor Law Provisions.

A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in the performance of the Work.

B. The Design-Builder specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:

1. No worker, in the employ of the Design-Builder, all Subcontractors or other person doing or contracting to do the whole or any part of the Work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) Day and more than five (5) Days in any one week, except in the extraordinary emergencies set forth in the Labor Law.
2. The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by Law.
3. The minimum hourly rate of wage to be paid and supplement provided should be not less than that stated in the Contract and as shall be designated by the Commissioner of Labor of the State of New York.
4. The Design-Builder and all Subcontractors shall post in a prominent and accessible place on the Site, a legible notice of all minimum wage rates and supplements to be paid or provided for the various classes of workers engaged in the performance of the Work and all deductions, if any, required by Law to be made from unpaid wages actually earned by any worker so engaged.
5. The Design-Builder and all Subcontractors shall provide a notice to all workers of the prevailing wage rate for all worker's particular job classification on each pay stub and to post a notice at commencement of the Work that includes the telephone number and address for the Department of Labor and a notice informing all workers of their right to contact the Department of Labor if a worker is not receiving the proper prevailing rate of wages and/or supplements for a worker's particular job classification.

6. The Design-Builder shall be responsible for obtaining prevailing wage rate updates directly from the New York State Department of Labor, either by accessing its website <http://www.labor.state.ny.us> or a written request to the Bureau of Public Works.

C. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade which such persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by Law, the number of apprentices in each trade or occupation employed by the Design-Builder or any Subcontractor shall not exceed the number permitted by the applicable standards of the New York State Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' association of the respective trades or occupations.

D. All workers of the Design-Builder and all Subcontractors shall be paid in accordance with the provisions of the Labor Law. The Design-Builder and all Subcontractors shall submit original copies of the Design-Builder and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request.

E. The Design-Builder agrees that, in case of underpayment of wages to any worker engaged in the Work by the Design-Builder or any Subcontractor, the Owner shall withhold from the Design-Builder out of payments due an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract and the wages actually paid such worker for the total number of hours worked, and that the Owner may disburse such amount so withheld by the Owner for and on account of the Design-Builder to the worker to whom such amount is due. The Design-Builder further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the Owner pursuant to other provisions of the Contract.

F. Pursuant to subdivision 3 (d) (i) of section 220 and section 220-d of the Labor Law the Contract shall be forfeited and no sum paid for any Work done there under upon the Design-Builder's or Subcontractor's second conviction within five years for willfully paying or providing less than:

1. The prevailing rate of wage or supplements, as defined in sections 220 and 220-d of the Labor Law.
2. The stipulated minimum hourly wage scale as designated by the Commissioner of Labor of the State of New York.

G. If the project is Federally funded in part or whole and therefore subject to the requirements of the Davis Bacon Act, the U.S. Department of Labor's government-wide implementation of the Act, or to Federal program legislation, the Design-Builder must pay the higher of either New York State prevailing wage rates or wages established for the locality of the project by the Federal Department of Labor.

H. The Design-Builder specifically agrees that all workers engaged on the Site, whether employees of the Design-Builder, Subcontractor, or other person performing or contracting to do any part of the Work, shall be certified as having successfully completed the OSHA 10 hour construction safety and health course.

Section 16.05 - Nondiscrimination.

During the performance of the Work, the Design-Builder agrees as follows:

A. If directed to do so by the Commissioner of Human Rights, the Design-Builder will send to each labor union or representative of workers with which the Design-Builder has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the Design-Builder's agreement under clauses A through E (hereinafter called "**non-discrimination clauses**"). If the Design-Builder was directed to do so by the Owner as part of the bid or negotiation of this Contract, the Design-Builder shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses and that it consents and agrees that

recruitment, employment and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Design-Builder shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

B. If directed to do so by the Commissioner of Human Rights, the Design-Builder will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of these nondiscrimination clauses and such provisions of the State's Laws against discrimination as the State Commissioner of Human Rights shall determine.

C. The Design-Builder will comply with the provisions of Section 290-301 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscriminatory clauses and such sections of the Executive Law, and will permit access to the Design-Builder's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these nondiscrimination clauses and such sections of the Executive Law and Civil Rights Law.

D. This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Owner upon the basis of a finding made by the State Commissioner of Human Rights that the Design-Builder has not complied with these nondiscrimination clauses, and the Design-Builder may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the Design-Builder satisfies the State Commissioner of Human Rights that the Design-Builder has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the Design-Builder and an opportunity has been afforded the Design-Builder to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by Law.

E. The Design-Builder will include the provisions of these nondiscrimination clauses in every Subcontractor purchase order in such a manner that such provisions will be binding upon each Subcontractor or vendor as to the operation to be performed within the State of New York. The Design-Builder will take such action in enforcing such provisions of such Subcontract or purchase order as the State Commissioner of Human Rights or the Owner may direct, including sanctions or remedies for noncompliance. If the Design-Builder becomes involved in or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the Owner, the Design-Builder shall promptly so notify the Attorney General requesting the Attorney General to intervene and to protect the interests of the State of New York.

F. Pursuant to Labor Law, Section 220-e, the Design-Builder specifically agrees:

1. That in the hiring of employees for the performance of Work under the Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no Design-Builder, Subcontractor, nor any person acting on behalf of such Design-Builder or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates.
2. That no Design-Builder, Subcontractor, nor any person on behalf of such Design-Builder or Subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the Contract on account of race, creed, color, disability, sex or national origin.
3. That there may be deducted from the amount payable to the Design-Builder, by the Owner under the Contract, a penalty of fifty dollars (\$50.00) for each person for each Day during which such person was discriminated against or intimidated in violation of the terms of the Contract.

4. That the Contract may be canceled or terminated by the Owner and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract.

Section 16.06 - Domestic Steel.

The Dormitory Authority is required to comply with all provisions of Title 4 of Article 9 of the Public Authorities Law and in accordance therewith, the Owner may require that structural steel, reinforcing steel or other major steel items to be incorporated into the Work of the Contract in excess of \$100,000 be produced or made in whole or substantial part in the United States, its territories or possessions. The Owner, in its discretion, may grant waivers of this requirement in accordance with Public Authorities Law Section 2603-a. Design-Builder must request a waiver in writing and obtain a written waiver of this requirement from Owner before using in performance of the Work any steel not produced or made in whole or substantial part in the United States, its territories or possessions.

Section 16.07 - General Contract Provisions.

- A. The Design-Builder agrees that the Contract shall be deemed executory to the extent of moneys available from either: (1) the proceeds of bonds issued by the Dormitory Authority for the Contract, (2) moneys made available by the Client for the Contract, (3) other non-Dormitory Authority moneys made available from whatever source specifically for the Contract and no liability shall be incurred by the Owner beyond moneys available therefore.
- B. Not Used.
- C. The Owner is exempt from the terms of fair trade agreements for sales to the Contract.

Section 16.08 - Failure to Comply with Article 16.

- A. The Owner will not be responsible for any Claim arising from compliance with this Article 16.
- B. The Contract shall be void and of no effect unless the Design-Builder complies with this Article 16.

ARTICLE 17 - AUDITS/INVESTIGATIONS/ETHICS

Section 17.01 - Auditing Rights.

Design-Builder, concurrently with performance of the Work, shall prepare and keep accurate and complete substantiating records and books of account regarding performance of the Contract showing all charges, disbursements, or expenses made or incurred by it or its Subcontractors in performing the Work and showing compliance with the Laws (“**Account Records**”). Unless otherwise required by Laws, Design-Builder shall preserve such Account Records for six (6) years after Final Completion or termination of the Design-Builder. Such Account Records shall be available at all reasonable times (before, during, and after the Work is completed) for inspection and subject to audit and/or reproduction by Owner, its mutually agreed representative or designee, or appropriate Governmental Agencies without additional cost to Owner. If the Work, or any portion thereof, is performed on a cost reimbursable, time and material, or labor hour basis, such records and books of account shall be open at all reasonable times (before, during, and after the Work is completed) for inspection and audit by Owner or Owner’s Authorized Representative without additional cost to Owner. The costs of any audit, bourn by the Owner, may be deducted from the GMP.

- A. **Compliance Audits.** Design-Builder agrees to cooperate with any audit conducted by Owner, its designee, or representative to evaluate Design-Builder’s compliance with the Contract Documents including, but not limited to, safety and quality.
- B. **Timing of Audit.** Owner shall have the right, on reasonable Notice and within six (6) years of Final Completion, to audit and inspect at all reasonable times during the performance of the Work and for such time as may be required by Laws, Design-Builder’s and its Subcontractors’ records and accounts covering Allowable Construction Costs, project status, or schedules. This right shall include, but is not limited to, books, records, files, accounts, bids, schedules, correspondence,

logs, underlying supporting information, electronic communications, computer records, documents and correspondence, including electronically-stored information, data related to its estimates for the Work, invoices, forecasted projections, design, progress, sequencing of the Work, costs of the Work (to the extent related to Allowable Construction Costs) Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Subcontractor, consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records, any agreed indices utilized for purposes of establishing the GMP, in connection with performing the Work in accordance with the Contract and in the possession or control of the Design-Builder, its Subcontractors and any of their subsidiaries and Affiliates and any other company directly or indirectly controlled by the Design-Builder. If such an audit reveals that errors have been made in connection with the Fees, costs and other charges invoiced to Owner, then the Parties will work together to correct the error and any overpayments revealed by the audit will be promptly paid by Design-Builder to Owner.

C. Access. Owner's representative or designee shall have reasonable access to Design-Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article. Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Design-Builder's records (including records of Subcontractors) at the Owner's reasonable expense, within adequate workspace at the Design-Builder's facilities. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Design-Builder shall execute such documents, if any, as are necessary to give the Owner access to Contract-related books, documents or records, which are, in whole or part, under control of the Design-Builder but not currently in the Design-Builder's physical possession. The Design-Builder shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Design-Builder, for purposes of the Contract.

D. Third-Party Records. This right to audit clause shall extend to transactions with Subcontractors or other third parties when the transactions are deemed by Owner and/or its duly authorized representatives to relate, actually or potentially, to performance under the Contract Documents. The Design-Builder shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, consultants and suppliers, in connection with the Contract, a right-to-audit clause in favor of the Owner conferring rights and powers of the type outlined in this General Conditions, Section. The Design-Builder shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Design-Builder shall assist the Owner in obtaining access to past and present Subcontractor, consultant and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements. The Design-Builder shall not make any payments to a Subcontractor, consultant or supplier from whom the Design-Builder has failed to obtain and supply to the Owner complete, accurate and truthful information in compliance with a request from the Owner to the Design-Builder.

E. Non-Fixed-Price Work. For any and all non-fixed price Work, Design-Builder shall permit Owner's Representative or its agents to:

1. Review all evidence deemed necessary by auditors or their agents to substantiate charges for Allowable Construction Costs, including overhead allocations as may apply to associated costs. Design-Builder's Records shall, upon reasonable Notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by Owner's Representative or an outside representative engaged by Owner. Owner or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of six (6) years after Final Completion or longer if required by Law. Owner's Representative or outside representative may (without limitation) conduct verifications such as counting employees at the Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Design-Builder employees, field and agency labor, subcontractors, and vendors.

2. Have reasonable access to the Design-Builder's facilities and be allowed, in the presence of Design-Builder's counsel, to interview all current or former employees, subject to former employee's agreement, to the extent necessary to conduct the audit. Owner's Representative shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article.

F. Design-Builder Records. Design-Builder's "Account Records" or "Records" as referred to in this Section shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's or auditor's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on the costs and expenses at issue to the extent necessary to adequately permit evaluation and verification of any or all of the following: (1) Compliance with contract requirements for deliverables; (2) Compliance with approved plans and specifications; (3) Compliance with Owner's business ethics expectations; (4) Compliance with Contract provisions regarding the pricing of Change Orders; (5) Accuracy of Design-Builder representations regarding the pricing of invoices; and (6) Accuracy of Design-Builder representations related to claims submitted by the Design-Builder or any of his payees.

G. Overpricing. If an audit inspection or examination in accordance with this Article, discloses overpricing or overcharges (of any nature) by the Design-Builder to the Owner in excess of one-half percent (0.5%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Design-Builder, then Design-Builder shall pay Owner the amount of any overcharge or unsupported amount to the extent previously paid by Owner. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) Days) from presentation of Owner's findings to Design-Builder.

H. Not Used.

Section 17.02 - Owner's Right to Audit.

The Design-Builder shall maintain and keep, for a period of at least six (6) years after the date of final Application for Payment, all records and other data relating to the Work, including records of Subcontractors and material suppliers. The Owner shall have the right to inspect and audit all records and other data of the Design-Builder, Subcontractors and material suppliers relating to the Work. The costs of an audit, bourn by the Owner, may be deducted from the Contract amount.

Section 17.03 - False Statements/Information/Disclosure.

Failure to comply with General Conditions, Section 17.01, providing False Representations, false statements or inaccurate information submitted with Contract Documents including, but not limited to, an Application for Payment, a Claim or a Change Order, or False Representations, false statements, or inaccurate information submitted to the Owner, or a determination that the Design-Builder participated in the kick-back of wages may result in one or more of the following actions:

1. Termination of the Contract for cause, pursuant to General Condition, Section 11.1.
2. Rejection of future bids or disapproval of a contract and subcontract.
3. Withholding of payments.
4. Criminal prosecution.

5. Civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
6. Rejection of a Claim or Change Order.

Section 17.04 - Not Used.

Section 17.05 - Disclosure of Criminal Investigation.

A. The Design-Builder shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Design-Builder, or its Affiliates as identified in the NYS Vendor Responsibility Questionnaire for Profit Construction CCA-2, are subpoenaed or questioned in connection with any business-related criminal investigation, whether or not the owner, partner, director, officer or employee is, or is believed to be, the subject or target of such investigation, or is notified or otherwise learns that any owner, partner, director, officer or employee of the Design-Builder or its Affiliates is under investigation for an alleged business-related violation of criminal Law, or in the event that any premises or records of the Design-Builder are searched pursuant to a search warrant seeking evidence of a crime or crimes, unless otherwise precluded by law enforcement authorities.

B. The Design-Builder shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Design-Builder or its Affiliates companies as identified in the NYS Vendor Responsibility Questionnaire, the firm itself, or one of its Affiliates companies is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal Law, unless otherwise precluded by law-enforcement authorities.

C. In the event that any owner, partner, director, officer or employee of the Design-Builder is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal Law relating to this or any other Dormitory Authority Contract, the Owner may require the Design-Builder to remove said owner, partner, director, officer or employee from any direct involvement in the affairs of the Design-Builder as it relates to this Contract and all other Dormitory Authority contracts until the criminal matter is resolved. In the event that any owner, partner, director, officer or employee of the Design-Builder is convicted of a business-related violation of local, state or federal criminal Law, the Owner may require the Design-Builder to permanently remove said individual from any direct involvement in the affairs of this and all other Dormitory Authority contracts.

D. In the event that the Design-Builder or any owner, partner, director, officer or employee of the Design-Builder is convicted of a business-related violation of local, state or federal criminal Law, the Owner may schedule a hearing with the Design-Builder to determine the Design-Builder's responsibility to continue work under this Contract and other Dormitory Authority contracts. Following this hearing, the Owner may, at its sole discretion, take one or more of the following actions:

1. Terminate the Contract.
2. Require the Design-Builder, at its own expense, to hire an independent private-sector inspector general to monitor its activities, institute procedures and conduct internal inquiries, in a manner prescribed by the Owner.
3. Increase retainage in an amount not to exceed ten percent (10%).
4. Take any other remedial action deemed appropriate.

Section 17.06 - Anti-Riot Provisions.

The Design-Builder agrees that no part of the Contract funds shall be used to make payments, give assistance, or supply services, in any form, to any individual convicted in any federal, state, or local court of competent jurisdiction for inciting, promoting, or carrying on a riot, or engaging in any group activity resulting in material damage to property or injury to persons found to be in violation of federal, state or local Laws designed to protect persons or property.

Section 17.07 - Ethical Conduct.

A. Officers and employees of the Owner are bound by Sections 73, 73-a, and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, architect, attorney, engineer, inspector or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

B. Section 73(5) of the *Public Officers Law* expressly prohibits the Design-Builder, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties or was intended as a reward for the employee's official action.

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

C. To promote a working relationship with the Owner based on ethical business practices, the Design-Builder is expected to:

1. Furnish all goods, materials and services to the Owner as contractually required and specified.
2. Submit complete and accurate reports to the Owner and its representatives as required.
3. Not seek, solicit, demand or accept any information, verbal or written, from the Owner or its representatives that provides an unfair advantage over a competitor.
4. Not engage in any activity or course of conduct that restricts open and fair competition on Owner-related projects and transactions.
5. Not engage in any course of conduct with Owner employees or its representatives that constitutes a conflict of interest, in fact or in appearance.
6. Not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.

D. The Owner encourages the Design-Builder to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.

E. Although the Design-Builder may employ relatives of Owner employees, the Owner must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Owner reserves the right to request that the Design-Builder modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.

F. The Design-Builder may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of *two years* following their separation from service with the Owner. In addition, former employees of the Owner are subject to a “*lifetime bar*” from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the Owner.

G. The Design-Builder agrees to notify the Owner's Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Owner that is inconsistent with the contents of this Section.

H. Any violation of Section 17.06 shall justify termination of this Contract and may result in Owner's rejection of the Design-Builder's bids or proposals for future agreements.

Section 17.08 - Continuing Integrity.

A. Design-Builder shall at all times during the Contract term remain responsible. Design-Builder agrees, if requested by the President of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. The President of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of Design-Builder. In the event of such suspension, Design-Builder will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Design-Builder must comply with the terms of the suspension order. Contract activity may resume at such time as the President of Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

Section 17.09 - Iran Divestment.

A. By entering into this Contract, Design-Builder certifies, under the penalties of perjury, that Design-Builder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the NYS State Finance Law. Design-Builder further certifies that Design-Builder will not utilize on this Contract any subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the NYS State Finance Law.

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

ARTICLE 18 - 2005 PROCUREMENT LOBBYING LAW

Section 18.01 - Laws of 2005.

Design-Builder has affirmed its compliance with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), compliance with NYS State Finance Law § 139-k (5), obligation to disclose non-responsibility determinations under NYS State Finance Law § 139-j, and certified that the information provided with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate. Design-Builder hereby reaffirms its understanding of an agreement to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), re-certifies its compliance with NYS State Finance Law § 139-k (5) and recertifies that the information it provided with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate.

Section 18.02 - Not Used.

Section 18.03 - Termination Provisions.

The Owner reserves the right to terminate this Contract in the event it is found that the certification filed by the Design-Builder in accordance with NYS State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its right pursuant to General Conditions, Section 11.01 – Termination for Cause.

ARTICLE 19 - VENDOR RESPONSIBILITY.

Section 19.01 - Not Used.

Section 19.02 - NYS Vendor Responsibility Questionnaire.

A. The Design Builder has submitted a NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) as requested by the Owner. Owner may request an updated NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Design-Builder or for any Subcontractor as often as the Owner deems necessary to carry out the Owner's duties and responsibilities under this Contract.

B. The information contained in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) will serve as an informational resource to aid the Owner in making an award determination and in making other determinations for this Contract.

ARTICLE 20 - OPPORTUNITY PROGRAMS

Section 20.01 - General Provisions.

A. The Design-Builder agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS, and the regulations promulgated thereunder. These goals and requirements include: equal employment opportunities for minority group members and women (EEO), and contracting opportunities for NYS certified minority and women-owned business enterprises (MWBES). The Design-Builder's demonstration of good faith efforts pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Executive Law Article 15 (the Human Rights Law) and other applicable federal, state and local Laws.

B. Failure to comply with all requirements in this General Conditions Article 20 may result in a finding of non-responsiveness, non-responsibility, breach of contract, or any combination of the foregoing leading to the assessment of liquidated damages pursuant to General Conditions Section 20.06 and other remedies available to the Owner pursuant to the Contract and applicable Law.

Section 20.02 - Equal Employment Opportunity (EEO).

A. The provisions of NYS Executive Law Article 15-A, and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract. The Design-Builder shall:

1. Undertake or continue, and ensure each Subcontractor shall undertake or continue, existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

GENERAL CONDITIONS OF THE WORK

2. Submit an EEO policy statement to the Owner within seventy-two (72) hours after the date of the Letter of Intent to award the Contract.
3. Adopt a model EEO policy statement and require each Subcontractor to adopt a model EEO policy statement if the Design-Builder or Subcontractor does not have an existing EEO policy statement, and if the Owner requires the Design-Builder or Subcontractor to adopt a model EEO policy statement.
4. Have a Design-Builder's EEO policy statement that shall include the following language:
 - a. The Design-Builder will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Design-Builder shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
 - c. The Design-Builder shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Design-Builder's obligations herein.
 - d. The Design-Builder shall include the provisions of this General Conditions Section 20.02 (B) (4) (a), (b), and (c) and Subdivision E of this General Conditions Section 20.02, which provides for relevant provisions of the Human Rights Law, in every Subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.

B. To ensure compliance with this General Conditions Section 20.02, the Design-Builder shall submit a staffing plan, on a form provided by Owner, to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Design-Builder shall complete the staffing plan form and submit it when directed by Owner.

C. To ensure continuous compliance with General Conditions Section 20.02:

1. The Design-Builder shall submit a Workforce Utilization Report, and shall require each Subcontractor to submit a Workforce Utilization Report, in such form as shall be required by the Owner on a monthly basis during the term of the Contract.
2. Separate forms shall be completed by the Design-Builder and each Subcontractor.
3. Pursuant to Executive Order 162 (9 NYCRR 8.162) dated January 9, 2017, the Design-Builder and each Subcontractor are also required to report the gross wages paid to each of their employees for the Work performed by such employees on the Contract on a monthly basis.

D. The Design-Builder shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Design-Builder and each Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Section 20.03 - Opportunities for Minority and Women-Owned Business Enterprises (MWBE).

The Owner has established goals for the participation in this Contract of NYS certified minority-owned business enterprises (“**MBE**”) and NYS certified women-owned business enterprises (“**WBE**” and collectively with MBEs, “**MWBE**”). The goals (collectively, MWBE Contract Goals) are set forth in Article 22 of this Agreement.

A. The Design-Builder represents and warrants that, as a condition for award of the Contract, the Design-Builder has submitted a Statewide Utilization Management Plan (“**SUMP**”) via the NYS Contract System (NYSCS) which lists all proposed Subconsultants including an identification of the NYS certified MWBE subconsultants the Design-Builder intends to use to perform the design related Work of the Contract and to achieve the MWBE Contract Goals established in the Contract Documents. In addition, or alternatively, Design-Builder may have submitted a request for a waiver prior to award. Owner’s approval of the MWBE Utilization Plan approves a Subcontractor only for the purpose of the MWBE Utilization Plan and the Design-Builder’s utilization of any subcontractor, including those on the MWBE Utilization Plan, remains subject to the provisions of General Conditions, Article 6.

B. The Design-Builder further represents and warrants that, as a condition for Owner’s approval of the GMP, the Design-Builder shall submit a Statewide Utilization Management Plan (“**SUMP**”) via the NYS Contract System (NYSCS) which lists all proposed Subcontractors including an identification of the NYS certified MWBE subconsultants the Design-Builder intends to use to perform the Work of the Contract prior to the commencement of construction activities and to achieve the MWBE Contract Goals established in the Contract Documents. In addition, or alternatively, Design-Builder may have submitted a request for a waiver prior to award. Owner’s approval of the MWBE Utilization Plan approves a Subcontractor only for the purpose of the MWBE Utilization Plan, and the Design-Builder’s utilization of any subcontractor including those on the MWBE Utilization Plan, remains subject to the provisions of General Conditions, Article 6.

C. Design-Builder agrees to adhere to the MWBE Utilization Plan in the performance of the Contract. Design-Builder shall not change the Utilization Plan without the prior written approval of the Owner.

D. The Design-Builder understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1 may be applied towards the achievement of the applicable MWBE Contract Goal. The portion of a subcontract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the subcontract. The portion of a subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. The Owner will audit the Design-Builder’s efforts to achieve the MWBE Contract Goals through the NYSCS.

Section 20.04 - Good Faith Efforts.

A. The Design-Builder is required to exert good faith efforts to meet the established MWBE contract goals. The Design-Builder shall document good faith efforts pursuant to 5 NYCRR § 142.5 to provide meaningful participation by MWBEs as Subcontractors (which includes material suppliers, other vendors, and others; see definition of Subcontractor in General Conditions Article 1 - Definitions) in the performance of the Contract, to comply with the requirements of the Contract and to enable the Owner to determine compliance with the provisions of this General Conditions Article 20. Such documented good faith efforts shall be in accordance with DASNY’s Guidelines for documentation of good faith efforts (Good Faith efforts Guidelines) as follows:

- Attach a copy of the completed Utilization Plan in accordance with the MWBE goals established in the Contract Documents.
- Submit a written request for a referral list of MWBE’s certified by NYS Empire State Development
- Provide a record of written solicitations made to certified MBE/WBE obtained from the NYS Empire State Development directory of certified businesses located at <https://ny.newnycontracts.com>. Include dates and copies of solicitations made.

- Contact all the NYS Empire State Development certified MBE/WBEs posted in the list of interested subcontractors and suppliers on DASNY's website at: <http://www.dasny.org/construc/bidops/03C2.php>.
- Provide a record of advertisements placed in general circulation, trade and minority and women oriented publications. Include the name of publications and dates of advertisements.
- Submit documentation that clearly demonstrates that you contacted all the MBE/WBE identified through the outreach activities outlined above to determine their capacity to perform the applicable scope of work.
- Provide a record of ALL responses received from NYS certified minority and women-owned business enterprises to any such advertisements and solicitations made. Include dates and copies of any written responses.
- Provide a list of any pre-bid, pre-award, or other meetings attended with NYS certified minority or women owned businesses.
- List the efforts undertaken to subdivide portions of the work into smaller components in order to increase NYS certified minority and women-owned business enterprise participation.
- If the Design-Builder solicited any NYS certified minority and women-owned business enterprises located outside the region where the scope of work is to be performed, list the actions taken to contact and assess the financial ability of those firms to participate.
- Provide a description of all relevant contract documents, plans or specifications, or documents describing the scope of work which was made available to NYS certified minority and women-owned business enterprises for the purposes of soliciting their bids. Include the dates and manner in which these documents were made available.
- Confirm that the subcontract terms and conditions offered to NYS certified minority and women-owned business enterprises were the same as those offered in the ordinary course of business and to other subcontractors.
- Confirm that the Design-Builder engaged in direct in person or telephone negotiations with NYS certified MWBE firms where quotes originally submitted were deemed as too high.
- Confirm that payments for work performed by NYS certified minority and women-owned business enterprises were made in a timely fashion for past work so as to facilitate continued performance by the certified businesses.
- List any special considerations and/or concerns that are preventing adequate NYS certified minority and women-owned business enterprises to participate.

B. If the Design-Builder fails to adequately document good faith efforts, it may result in a finding of non-compliance.

Section 20.05 - Waivers.

A. If the Design-Builder, after making and demonstrating good faith efforts satisfactory to the Owner, is unable to achieve the MWBE Contract Goals, the Design-Builder may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Owner. The request for a waiver must be supported by evidence of the good faith efforts by the Design-Builder to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the good faith documentation included with the waiver request is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt. In accordance with 5 NYCRR 142.7, requests for waiver may be made at any time during the term of the Contract prior to the Design-Builder's submission of its Final Payment application.

B. If the Owner, upon review of the SUMP, the MWBE Utilization Plan, the NYSCS and any other relevant information, determines that the Design-Builder is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Owner may issue a notice of deficiency to the Design-Builder. The Design-Builder shall respond to the notice to deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals, which must be supported with evidence of the Contractor's good faith efforts as required by Section 20.04.

Section 20.06 - Damages - MWBE Participation.

A. If the Owner determines that the Design-Builder is not in compliance with the requirements of this General Conditions Article 20, the Design-Builder refuses to comply with the requirements of this General Conditions Article 20, and if the Design-Builder is found to have willfully and intentionally failed to comply with the MWBE Contract Goals, then Owner shall have the right to assess liquidated damages or other appropriate damages as set forth in Executive Law §316-a and 5 NYCRR §142.13, unless the Owner elects to pursue its remedies under NYS Executive Law Section 316.

B. If such liquidated damages or other appropriate damages have not been withheld by the Owner, the Design-Builder shall pay such damages to the Owner within sixty (60) days after they are assessed, provided, however, that if the Design-Builder has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR §142.2, damages shall be payable only in the event of a determination adverse to the Design-Builder following the complaint process. Damages under this Section are intended to compensate the Owner for the Owner's damages if the Owner determines that the Design-Builder is not in compliance with the requirements of General Conditions Sections 20.03, 20.04, and 20.05, the Design-Builder refuses to comply with the requirements of General Conditions Sections 20.03, 20.04, and 20.05, and if the Design-Builder is found to have willfully and intentionally failed to comply with the MWBE Contract Goals.

Section 20.07 - Reporting to Owner.

The Design-Builder shall complete the reports and submit as indicated to establish and update EEO requirements during the life of the Contract. Reports not submitted at such time shall be cause for the Owner to delay payment to the Design-Builder. The listed reports are a requirement of the Contract and copies are included in the Contract Documents and template forms are also available on the Dormitory Authority's web site at <http://www.dasny.org/forms> under MWSBE.

ARTICLE 21 - SERVICE-DISABLED VETERAN OWNED BUSINESS

Section 21.01 - General Provisions.

Article 17-B of the NYS Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran – Owned Businesses (SDVOB), thereby further integrating such businesses in to New York State's economy. The Owner recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Owner contracts.

Section 21.02 - Contract with Goals.

A. Design-Builder shall submit an SDVOB Utilization plan for approval by Owner. Design-Builder, by award of the Contract, certifies that Design-Builder shall follow the submitted and accepted SDVOB Utilization Plan for the performance of SDVOBs on the Contract.

B. Design-Builder shall not change the accepted SDVOB Utilization Plan without the prior written consent of the Owner. Any modifications or changes to the accepted SDVOB Utilization Plan after award of the Contract to the Design-Builder shall be reported to the Owner on a revised SDVOB Utilization Plan. As part of a revised SDVOB Utilization Plan, the Design-Builder may request a partial or total waiver of the goal for SDVOB participation but such request must be made prior to submission of the Application for Payment for the Final Payment on the Contract. Design-Builder shall make and shall document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. The revised SDVOB Utilization Plan is not effective unless and until it is accepted by the

Owner. If the revised SDVOB Utilization Plan is not accepted by the Owner, the Owner shall issue a notice of deficiency and the Design-Builder shall proceed as set forth in this General Conditions Section 21.02 (D).

C. Design-Builder shall report to the Owner Monthly SDVOB Design-Builder Compliance during the Contract documenting the preceding month’s progress towards implementing the accepted SDVOB Utilization Plan and achieving the SDVOB goals for the Contract. This information shall be submitted to the Owner in the manner and at the times directed by the Owner.

D. If the Owner, upon review of the SDVOB Utilization Plan and the Monthly SDVOB Design-Builder Compliance reports determines that the Design-Builder is failing or refusing to comply with the Contract SDVOB goals and no waiver has been issued with respect to such non-compliance, the Owner may issue a notice of deficiency to the Design-Builder. The Design-Builder shall respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the Contract SDVOB goals.

E. Design-Builder shall make and shall document its good faith efforts to utilize SDVOBs in the performance of the Contract. Evidence of required good faith efforts includes but is not limited to:

1. Copies of solicitations to SDVOBs and any responses thereto;
2. Explanation of the specific reason(s) each SDVOB responding to a Design-Builder’s solicitation was not selected;
3. Dates of any pre-bid, pre-award or other meetings attended by Design-Builder, if any, scheduled by the Owner with certified SDVOBs which the Owner determined were capable of fulfilling the SDVOB goals in the Contract;
4. Information describing the specific steps undertaken to reasonably structure the scope of subcontracts and material orders for the purpose of subcontracting with, or obtaining materials from, SDVOBs;
5. Other information relevant to the waiver request.

F. Design-Builder’s failure to use SDVOBs in accordance with the accepted SDVOB Utilization Plan or any accepted revised SDVOB Utilization Plan shall be a material breach of the Contract and upon such breach, the Owner shall be entitled to any remedy provided in the Contract, by law or regulation or at law or in equity, including but not limited to a finding the Design-Builder is non-responsible. If the Owner finds the Design-Builder willfully and intentionally fails to comply with the Contract SDVOB goals, the Design-Builder shall pay damages to the Owner as set forth in 9 NYCRR § 252.2(s).

ARTICLE 22 - MWBE CONTRACT GOALS

Section 22.01 - Goals.

A. The Design-Builder agrees, in addition to any other nondiscrimination provision of the Contract, and at no additional cost to the Owner, to fully comply with and cooperate in the implementation of the Design-Builder's Workforce Utilization Plan designed to provide for equal employment opportunities for Minorities and Women, and a goal oriented Utilization Plan for Minority/Women Business Enterprises (MWBE) and Service Disabled Veteran Owned Businesses (SDVOB) participation in the performance of the Work, in such form and substance as herein stated. The Design-Builder further agrees to incorporate all MWBE, SDVOB and other nondiscrimination provisions of the Contract in all subcontracts, regardless of tier. Design-Builder’s failure to comply with the provisions of this Article shall be a material breach of the Contract. The MWBE Contract Goals for this Project are:

1. Minority Business Enterprise _____%
2. Women Business Enterprise _____%

- 3. Equal Employment Work Force _____%
- 4. Service Disabled Veteran Owned Business _____%

B. Identification of Subcontracting Opportunities. At the completion of schematic design, i.e., thirty (30) percent construction documents, the Design-Builder shall also submit its best estimate of the construction packages for which it intends to utilize M/WBE and SDVOB Design-Builders, and the estimated or budgeted amount of these packages or contracts. The Design-Builder’s best estimate shall be updated at sixty (60) percent design development document completion. A meeting to review these submissions may be scheduled by the Owner.

C. The following forms shall be submitted and are hereby made a part of the Contract:

- Permanent Employee Distribution
- E.O 162 Workforce Utilization Report
- Monthly Work Force Employment Utilization Report
- Request For Waiver

ARTICLE 23 - OWNERSHIP OF DOCUMENTS

Section 23.01 - Work Product.

A. Any and all products of the Work performed by Design-Builder, any Subcontractor and any of their employees under the Contract Documents including, but not limited to, all Instruments of Service, inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, outlines, notes, reports, system plans, flow charts, source code, and other forms of computer software including computer modeling, algorithms, procedures, policies, data, documentation, and other materials or information which Design-Builder, any Subcontractor or any of their employees may conceive, invent, author, create, reduce to practice, construct, compile, develop, or improve in the course of performing the Work or otherwise delivered to Owner as part of the Work (collectively, “**Work Product**”) shall be the sole and exclusive property of Owner from and after the time it is created. Design-Builder agrees to disclose to Owner the existence of any Work Product of which Owner would not otherwise be aware promptly upon its creation. The Schematic Deliverables, the Design Development Deliverables, the Construction Documents, the Bid Documents and any other documents or electronic media prepared by or on behalf of the Design-Builder for the Project are the sole property of the Owner free of any retention rights of the Design-Builder. The Design-Builder hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, the Schematic Deliverables, the Design Development Deliverables, the Construction Documents, the Bid Documents and any other documents or electronic media prepared by or on behalf of the Design-Builder for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

B. Nature and Use of Information. All information, documents, and electronic media furnished by the Owner to the Design-Builder (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Design-Builder; and, (v) shall not be used by the Design-Builder on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Design-Builder shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract. The Owner agrees that the Design-Builder will not have any liability to the Owner for any revision or addition to, alteration or deviation from the Instruments of Services occurring subsequent to the Design-Builder's completion of services under the Contract or earlier termination in accordance with the Contract, except where such revision, addition, alteration or deviation is necessary as a result of the Design-Builder's failure to perform its duties under this Contract.

C. The “**Instruments of Service**” shall include any representations, in any form of expression now known or later developed, of tangible and intangible creative work performed by the Design-Builder or the Design-Builder’s Subcontractors. Original drawings and specifications will become the property of the Owner, and the Design-Builder may

not use the drawings and specifications for any purpose not relating to the Project without the Owner's consent. To the extent Owner consents, the Design-Builder may retain such reproductions of drawings and specifications as the Design-Builder may reasonably require. Upon completion of the Work or any early termination of this Contract, the Design-Builder will promptly furnish the Owner with the complete set of original record As-Built Drawings. All such original drawings and specifications shall become the property of the Owner who may use them, without the Design-Builder's permission, for any purpose including, but not limited to, and installing, operating, maintaining, and repairing (including sharing with third parties for bids), additions to or completion of the Project. All documents, including Drawings and Technical Specifications, furnished by Design-Builder and its Subcontractors pursuant to this Contract shall be the sole property of Owner. The Design-Builder grants Owner, and shall obtain from its Subcontractors, including its Design Subcontractors, a fully paid-up, non-exclusive, perpetual, royalty-free license to the design of the Project and the right to use same for any purpose including, but not limited to, installing, operating, maintaining, and repairing (including sharing with third parties for bids), without payment of royalty or additional compensation, all documents, including Drawings and Specifications, upon the occurrence of such events.

D. Assignment.

1. Design-Builder agrees to assign and hereby does assign to Owner (together with its successors and assigns) the sole and exclusive right, title, and interest in all Work Product, including any and all related patent, copyright, trademark, trade secret, and other property or proprietary rights of any nature whatsoever. Design-Builder warrants and agrees to execute and deliver to Owner, and Design-Builder agrees to cause Subcontractor and the employees of Design-Builder and Subcontractor to execute and deliver to Owner, any and all documents that Owner may request to convey to Owner any interest Design-Builder, Subcontractor or any of their employees may have in any Work Product or that are otherwise necessary to protect and perfect Owner's interest in any Work Product.
2. Design-Builder further warrants and agrees to take, and Design-Builder agrees to cause Design-Builder's employees to take, such other actions as Owner may request to perfect and protect Owner's interest in any Work Product. Design-Builder further agrees that the sums paid to Design-Builder by Owner in connection with Design-Builder's performance of the Work serve, in part, as full consideration for the foregoing assignment, and that said consideration is fair and reasonable, and was bargained for by Design-Builder. Design-Builder represents and warrants that it has full right, power and authority to grant the assignment granted under this General Conditions, Section 23.01 (D).

E. Instructions To Design-Builder Employees and Subcontractors. Because it is difficult to separate proprietary and confidential information from that which is not, the Design-Builder shall instruct its Personnel, Subcontractors, and agents to regard all information which is not in the public domain as information which is proprietary and confidential.

F. Design-Builder Retained Information. In the event and to the extent that any Work Product contains or requires for its use any items, elements, or components that were developed or otherwise acquired by Design-Builder and that are proprietary to Design-Builder ("**Design-Builder's Retained Information**"), Design-Builder shall identify such Design-Builder's Retained Information to Owner in writing. Design-Builder hereby grants to Owner and its Affiliates an irrevocable, perpetual, non-exclusive, royalty-free, world-wide license to: (i) use, reproduce, perform, and execute the Design-Builder's Retained Information; (ii) prepare derivative works based upon the Design-Builder's Retained Information; (iii) distribute copies of Design-Builder's Retained Information and of derivative works based upon Design-Builder's Retained Information; and (iv) authorize others to do any of the foregoing.

G. Knowledge. Nothing in this General Conditions, Section 23.01 should be construed to prohibit Design-Builder from using its skills, knowledge, and experience that have a general applicability, including such skills, knowledge, or experience gained by Design-Builder in connection with performing Work for Owner or in performing work or services for other clients; provided, however, that Design-Builder's knowledge or use thereof shall not include any Confidential Information of Owner.

H. Use of Work Product. Design-Builder agrees not to use any Work Product, including any drawings, specifications, reports or any unique design aspects of a Project in any other project without the prior written approval of Owner. Design-Builder's use of standard specification texts is specifically excluded from the provisions of this General Conditions, Section 23.01 (H).

I. Survivability. The obligations of this Section shall survive any termination of this Contract.

Section 23.02 - Confidential Information.

During the term of this Contract and thereafter, except as Owner or Design-Builder may authorize in writing, a Party receiving Confidential Information shall, and shall cause its employees and Subcontractors to: (a) treat and cause to be treated as confidential all Confidential Information, as designated by the disclosing Party in writing; (b) not disclose any Confidential Information to any third party or make available any reports, recommendations, or conclusions based on the Confidential Information to any third party without the disclosing Party's prior written approval; (c) reveal the Confidential Information only to those employees of the receiving Party who require such access in order to perform the Work hereunder; (d) if requested by the disclosing Party, grant access to Confidential Information only to employees of the receiving Party who have signed a confidentiality agreement; (e) use Confidential Information only in connection with the Work; (f) make copies of any tangible embodiment of Confidential Information only as necessary for the Work; (g) remove any tangible embodiment of Confidential Information from the premises of the disclosing Party only with the express permission of the disclosing Party; and (h) return any or all tangible embodiments of Confidential Information to the disclosing Party promptly following the request of the disclosing Party, and in any event upon completion of the Work pursuant to the Contract Documents except that receiving Party shall be entitled to retain a copy of all Confidential Information for purposes of demonstrating compliance with this Contract.

A. Authorized Disclosure. Owner may disclose all such information to regulatory and/or other governmental body as required by Laws. In the event that Owner is required by Laws to disclose any Confidential Information, Owner shall provide Design-Builder with prompt notice of such requirement. Notwithstanding anything herein to the contrary, Owner may disclose Confidential Information to third parties, for the purpose of the construction, operation, modification, upgrade, enhancement or maintenance of the Work. Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

B. Irreparable Harm. Design-Builder acknowledges that the breach of any of the covenants contained in Section 23.02 will result in irreparable harm and continuing damages and that Owner's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available at law or in equity in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including, but not limited to, an injunction restraining disclosure, in whole or in part, any Confidential Information. The breaching Design-Builder shall pay all of the Owner's costs and expenses, including reasonable attorneys' fees and accountants' fees, incurred in enforcing such covenants. The obligations of this Section shall survive any termination of this Contract.

Section 23.03 - Record Set.

Design-Builder agrees to retain and maintain (at no additional cost to Owner) at least one record set of all documents obtained or generated in the course of the Work for a period of six (6) years from the date of the completion of the Work. Design-Builder, at the end of the six- (6) year period, shall notify Owner of its intent to destroy the documents. If Owner requests that some or all of the documents be preserved beyond the initial six (6) years referenced herein, Design-Builder shall deliver all such documents to Owner. Any request by Design-Builder to destroy such documents shall be in writing and sent to Owner at the address for Notices. The obligations of this Section survive any termination of this Contract.

ARTICLE 24 - TESTING AND FINAL COMPLETION

Section 24.01 - Scheduling of Performance Tests.

A. Performance Tests. (Owner intends to issue an Addendum after the RFP is issued that will identify equipment and system performance parameters, guaranties, and liquidated damages.)

1. A draft of the proposed Performance Test Procedures shall be prepared by Design-Builder and delivered to Owner not less than one hundred twenty (120) Days prior to the scheduled Substantial Completion Date. The draft Performance Test Procedures prepared by Design-Builder shall comply with the applicable provisions of

the Contract Documents and must (i) require that on or before Substantial Completion, Design-Builder shall have conducted the Performance Tests and achieved the Performance Guarantees set forth in Exhibit I. Owner shall review such draft and provide written comments to Design-Builder with thirty (30) Days of receipt of the draft Performance Test Procedures. Design-Builder and Owner shall cooperate and diligently work to complete an agreed final version of the Performance Test Procedures no later than sixty (60) Days prior to the scheduled Substantial Completion Date. Design-Builder and Owner shall cooperate and in good faith finalize Performance Test Procedures in accordance with Exhibit C and Exhibit R.

2. At least sixty (60) Days prior to the time Design-Builder believes that the Work will be ready for Performance Tests, Design-Builder shall provide Notice to Owner of Design-Builder's estimated date to begin the Performance Tests.
3. Performance Tests shall be scheduled with due regard for minimizing the operating expenses of and maximizing operation during such tests. The tests must be conducted and passed in accordance with the provisions of the Contract Documents, including Exhibit C and Exhibit R. Such tests must be conducted (i) in the presence of Owner and (ii) utilizing the personnel provided by Owner, acting under the direct technical supervision and control of Design-Builder. No auxiliary, standby or temporary equipment or machinery may be used during the performance of the Performance Tests, unless otherwise approved in writing by Owner. All Materials and equipment and systems of the Facility must be operational. The Facility will be operated in its usual mode of operation (using a normal complement of operating personnel) while the Performance Tests are being conducted, which consists of (a) the operation of the Facility as a whole in accordance with Project requirements and in accordance with Prudent Industry Practice and (b) the operation of all Facility systems and equipment within the manufacturers' specifications, recommendations and warranty requirements and Prudent Industry Practice, and without over-stressing or over-pressurizing any such systems. Design-Builder shall be entitled to provide test technicians for purposes of data collection and similar services during testing; provided, however, that such technicians do not operate the Materials and equipment during any such test. All costs and expenses incurred in relation to the Performance Tests shall be borne by Design-Builder. If Design-Builder fails to successfully perform any of the Performance Tests, the Defects, deficiencies and other conditions which so prevent performing such tests successfully must be immediately thereafter corrected and/or remedied by Design-Builder in accordance with Section 24.03 below. Upon completion of such corrective and/or remedial actions, Design-Builder shall re-perform the Performance Tests upon not less than twenty-four (24) hours prior-written notice to Owner. The foregoing procedures shall be repeated until the Performance Tests have been successfully conducted but in no way excuse Design-Builder from timely achievement of the Guaranteed Substantial Completion Date. The results of all inspections and tests shall be provided to Owner together with gross and reduced data and other information reasonably requested by Owner. The Performance Tests shall be conducted in accordance with this Subsection 24.01 (A) (3) for the purpose of demonstrating the achievement of Substantial Completion and Final Completion, as the case may be.

Section 24.02 - Achievement of Performance Guarantees.

Subject to Subsection 24.03 (B), if the Performance Tests demonstrates that the Work meets the Performance Guarantees the Work will be accepted by Owner for Substantial Completion so long as the Work meets the remaining conditions precedent specified in General Conditions, Article 9 for Substantial Completion.

Section 24.03 - Retesting Upon Failure of Performance Test.

Within five (5) Business Days of completion of a failed Performance Test, Design-Builder must submit a corrective action plan complete with all drawings, data, specifications, schedule, and other information required for approval of the plan by Owner and shall complete all such corrective action as soon as reasonably possible to meet the Performance Guarantees.

A. Failure to Meet the Performance Guarantees. For all Performance Guarantees, Design-Builder will continue to take corrective measures and repeat the Performance Tests at its sole cost until the Performance Guarantees are met and accepted by Owner.

B. Failure to Meet Performance Guarantees. If the Performance Guarantees are not met, Contactor shall complete corrective measures in accordance with General Conditions, Section 24.03 (B) (1).

1. **Completion of Corrective Measures.** All corrective measures shall be completed prior to Substantial Completion (the “**Correction Period**”). The Correction Period may be extended by mutual agreement of the parties in the event (a) Design-Builder must procure or manufacture any items which will take longer than ninety (90) Days to procure or manufacture to achieve the criteria for Substantial Completion; (b) Owner has failed to provide Design-Builder with reasonable access to the Materials; or (c) as otherwise mutually agreed upon by the Parties. When Design-Builder notifies Owner in writing that it believes that the cause of the failure has been corrected, the Performance Tests shall be repeated by Design-Builder or its designee. Design-Builder shall be responsible for all costs associated with the retest(s). If the Work again fails to meet any or all of the Performance Guarantees, Design-Builder shall be afforded another opportunity to cure the failure, provided the Correction Period has not lapsed.
2. **Missed Performance Guarantees.** If Design-Builder fails to meet any of the Performance Guarantees, Design-Builder shall pay the liquidated damages as set forth in General Conditions, Section 9.03.

Section 24.04 - Root Cause Repairs for Failure to Meet Performance Guarantees.

If the Work fails to meet the Performance Guarantees, Design-Builder shall investigate the root cause of the failure to meet the Performance Guarantees and make such repairs, replacements, or adjustments as are necessary, including any retesting, to correct the root cause of the failure, including any replacements or adjustments so that the Work meets the Performance Guarantees. All root-cause reports shall be delivered to Owner within one (1) Day after receipt of, or development of, same by Design-Builder.

Section 24.05 - Witnessing Tests and Inspection.

Design-Builder shall perform all inspection, pre-performance testing, expediting, quality surveillances, and traffic services as necessary for the performance of the Work. Design-Builder’s responsibilities under this Section include inspecting and testing such Work (including Materials and equipment) in accordance with the Contract Documents and as is customarily inspected or tested in accordance with Prudent Industry Practice, including inspecting work in progress at intervals appropriate to the stage of construction or fabrication, whether on or off of the Site, as necessary to ensure that such Work is proceeding in accordance with this Contract and the Schedule. All third-party inspections, tests, or approvals must be performed by qualified organizations acceptable to Design-Builder and Owner. If Laws require any Work to specifically be inspected, tested, or approved, Design-Builder shall assume full responsibility therefor and furnish to Owner the required certificates of inspection, testing, or approval. Not later than one hundred twenty (120) Days prior to the first expected delivery of Materials and equipment to the Job Site, Design-Builder will supply to Owner a quality surveillance plan for all Materials and equipment that will be inspected by Design-Builder. A chart, accompanying each Monthly Report delivered by Design-Builder shall specify the date, time, and location of factory tests, inspections, and witness points of which Design-Builder is then aware of and intends to witness with respect to Materials and equipment or other work to be provided or performed by its Subcontractors in the sixty (60) Day period following the month in which each such Monthly Report is delivered to Owner. If and when Design-Builder obtains new information about such factory tests, inspections, or witness points or other factory tests, inspections, or witness points that was not available to it when the Monthly Report was delivered, it will promptly advise Owner and update such information as necessary to allow Owner a reasonable opportunity to attend such event. Design-Builder shall give reasonable notice of changes to such dates, times, and locations to allow Owner to make arrangements to attend, it being understood that tests, inspections, or witness points to be performed outside the United States will require additional notice. Owner and its invitees have the right, but not the obligation, to attend any inspections, tests, or approvals of the Work. In no event shall Design-Builder’s obligation to provide notice regarding certain tests, inspections, or approvals or Owner’s and its designees’ right to attend tests, inspections, or approvals limit, delay, or modify Design-Builder’s obligation to perform all tests, inspections, or obtain approvals required by this Contract. Successful completion of factory or other off-Site tests is a precondition to shipment of such Materials and equipment to the Site or other Design-Builder storage facility, unless otherwise agreed by Owner. Design-Builder shall thereafter implement such plan and re-perform and demonstrate that such test has been passed. Should Design-Builder fail to give proper notice under this Section, at Owner’s option, Design-Builder shall re-perform or re-inspect any such test or inspection as to which Design-Builder failed to give proper notice if Owner has reviewed the test results (which are to be provided to Owner within five (5) Business Days of such failure or as soon thereafter as test results are available to Design-Builder) and gives notice to Design-Builder questioning the validity, accuracy, or completeness thereof.

ARTICLE 25 - REMEDIES AND WAIVER

Section 25.01 - Not Used.

Section 25.02 - Exclusive Remedies.

The liabilities, obligations, warranties, and remedies of the Parties are exclusively those expressly set forth in this Contract.

Section 25.03 - Waiver of Consequential Damages.

Owner and Design-Builder expressly waive all claims for all consequential, incidental, indirect, punitive, or special damages arising out of or relating to this Contract. Nothing in this Section 25.03 shall be construed to limit or effect insurance coverage as required by this Contract nor waive either party's right to make a claim for and recover direct damages arising out of a breach of the parties respective obligations under and in accordance with the express provisions of this Contract. This provision shall survive the termination of the Agreement.

ARTICLE 26 - MISCELLANEOUS PROVISION

Section 26.01 - Entire Contract; Amendment.

This Contract sets forth the full and complete understanding of the Parties with respect to the subject matter hereof, as of the Effective Date, and supersedes any and all contracts, agreements, and representations (oral or written) made or dated prior thereto. Notification of objection to different terms and conditions not agreed to in writing is hereby given. Subsequent to the date hereof, the Contract Documents may be supplemented and amended only by written contract signed by authorized representatives of the Parties.

Section 26.02 - Independent Contractor.

Design-Builder shall be an independent contractor with respect to the Work to be performed hereunder. Design-Builder, its Subcontractors or the employees of any of them, shall not be deemed to be servants, employees, fiduciaries, or agents of Owner. The relationship created by the Contract between the Owner and the Design-Builder is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Design-Builder nor is it to be construed as, in any way or under any circumstances, creating or appointing the Design-Builder as an agent of the Owner for any purpose whatsoever.

Section 26.03 - Signs.

Neither Design-Builder nor its Subcontractors shall place or maintain, or permit to be placed or maintained, any sign, bill, or poster on or about the Premises without the prior consent of Owner's Representative.

Section 26.04 - Not for Benefit of Third Parties.

Except as provided herein, this Contract and each and every provision hereof and thereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the Owner, the State of New York, the Client, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the Contract; however, it is understood that the Client is an intended third party beneficiary of the Contract for the purposes of recovering any damages caused by the Design-Builder.

Section 26.05 - Governing Law and Venue.

A. Jurisdiction. It is the express intention of the Parties that all legal actions and/or proceedings related to this Contract or to the Project or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in state or federal courts located in the County of Albany, New York. The Design-Builder and the Owner each irrevocably consents to the jurisdiction of such courts in any such legal action and/or proceeding and waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. The choice

of jurisdiction described in this Section shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction other than that specified herein. The Parties waive any right to assert the doctrine of forum *non conveniens*. The Parties expressly waive the right to a jury trial.

B. Choice of Law. This Contract, and all amendments and modifications hereof, and all documents and instruments executed and delivered pursuant hereto or in connection herewith, shall be governed by and construed and enforced in accordance with the internal Laws of the State of New York, without regard to principles of conflict of laws. No action or proceeding shall lie in favor of or shall be maintained by the Design-Builder against the Owner unless such action shall be commenced within six (6) months after the earliest following event: (1) the date the Notice of Substantial Completion is executed by the Owner; (2) receipt, by the Owner, of the Design-Builder's final Application for Payment, if no Notice of Substantial Completion is issued; or (3) the date of termination if the Contract is terminated by the Owner.

C. Interest. If the Design-Builder obtains a judgment against the Owner in any action and/or proceeding, the Design-Builder agrees to accept no more than three percent (3%) interest, per annum, on the amount of the judgment. In the event that a judgment is obtained against the Owner, the Design-Builder agrees to accept no more than three percent (3%) interest, per annum on the judgment amount.

Section 26.06 - Binding Effect; Successors and Assignees.

A. This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

B. The Design-Builder shall not assign the Contract in whole or in part without prior written consent of the Owner. If the Design-Builder assigns all or part of any moneys due or to become due under the Contract, the instrument of assignment shall contain a clause substantially to the effect that the Design-Builder and assignee agree that the assignee's right in and to any moneys due or to become due to the Design-Builder shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work. The Owner reserves the right to assign this Contract in whole or in part without the consent of the Design-Builder.

C. Upon the request of either Party, the other Party shall acknowledge in writing any permitted assignment described in General Conditions, Section 24.06 (B) and the right of any permitted assignee to enforce this Contract against such other Party.

D. Unless otherwise agreed by the Parties hereto in a separate writing, no permitted assignment described in this Section shall relieve the assigning Party from any of its obligations under this Contract. However, the assignee may be required by the assigning Party to agree to indemnify and hold harmless the assigning Party from some or all of its obligations under this Contract.

Section 26.07 - State Comptroller Approval.

This Design-Build Contract shall be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to State Finance Law Section 112 and the regulations issued thereunder. This Contract shall not be valid and enforceable, nor shall the Owner have any liability of any kind arising from or in connection with this Design-Build Contract, unless and until OSC approval has been received by Owner.

Section 26.08 - Rules of Construction.

Each Party has reviewed and discussed this Contract with counsel and agrees that this Contract shall not be construed by applying any rule of construction providing for interpretation against the drafting Party.



General Requirements of the Work

DRAFT

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SECTION 011200 – CONTRACT SUMMARY OF WORK

Section Description: Responsibilities of each contract for the work, coordination for temporary facilities and controls

SECTION 012100 – ALLOWANCES

Section Description: Provisions for cash allowances including lump-sum, unit cost, contingency allowances

SECTION 012300 – ALTERNATES

Section Description: Provisions for change-of-scope and cost-comparison type alternates

SECTION 012900 – PAYMENT PROCEDURES

Section Description: Administrative requirements for Design-Builder's Application for Payment

SECTION 013100 – PROJECT MANAGEMENT AND COORDINATION

Section Description: Administrative requirements for project meetings; preconstruction, construction kick-off, progress; RFIs and Web sites

SECTION 013200 – CONSTRUCTION PROGRESS DOCUMENTATION

Section Description: Design-Builder's responsibility to coordinate and cooperate with Owner to maintain P6 Project Management (scheduling software); Design-Builder's reports

SECTION 013300 – SUBMITTAL PROCEDURES

Section Description: Procedures for action and informational submittals including product submittals and submittal schedule

SECTION 014000 – QUALITY AND CODE REQUIREMENTS

Section Description: Administrative and regulatory requirements for Work permit, code compliance certificate and certificate of occupancy; NYS Statement of Special Inspections and Tests

SECTION 015000 – TEMPORARY FACILITIES AND CONTROLS

Section Description: Temporary utilities and facilities for construction support, security and facility protection

SECTION 016000 – PRODUCT REQUIREMENTS

Section Description: Administrative and procedural requirements for product, material, and equipment selection and handling, warranties and comparable products

SECTION 017329 – CUTTING AND PATCHING

Section Description: Procedural requirements for cutting and patching

SECTION 017419 – CONSTRUCTION WASTE MANAGEMENT

Section Description: Procedural requirements for construction waste management with criteria for recycling and/or salvaging demolition and construction waste

SECTION 017700 – CONTRACT CLOSEOUT REQUIREMENTS

Section Description: Administrative contract closeout requirements including closeout conference, Notice of Substantial Completion, final Application for Payment and final cleaning

SECTION 017823 – OPERATION AND MAINTENANCE MANUALS

Section Description: Maintenance and record keeping requirements of operational and maintenance manuals for products and equipment

SECTION 017839 – AS BUILT DOCUMENTS

Section Description: Maintenance and record keeping requirements of As-Built Drawings, as-built specifications, as-built schedule and other product record documents

SECTION 018113 – SUSTAINABLE DESIGN REQUIREMENTS

Section Description: General requirements and procedures for LEED prerequisites and credits

SECTION 019113 – GENERAL COMMISSIONING REQUIREMENTS

Section Description: Administrative requirements and procedures for commissioning all systems

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SECTION 011200 - CONTRACT SUMMARY OF WORK

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Contract, General Conditions of the Work, Drawings and individual Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section includes a summary of the Work for the Project, including responsibilities for coordination and temporary facilities and controls.
- B. Specific requirements for the Work are also indicated in the remaining Contract Documents including individual Specification Sections and on Drawings.
- C. Related Sections:
 - 1. Section 013100 - Project Management and Coordination.
 - 2. Section 013200 - Construction Progress Documentation.
 - 3. Section 015000 - Temporary Facilities and Controls.

1.3 DEFINITIONS

- A. Permanent Enclosure: As determined by the Owner, the condition at which roofing is insulated and weathertight; exterior walls are insulated and weathertight; and all openings are closed with permanent construction or substantial temporary closures equivalent in weather protection to permanent construction.

1.4 DESIGN-BUILDER'S PROJECT MANAGER

- A. Design-Builder and each Subcontractor shall identify a project manager who shall be responsible for coordination between and among each and all contractors and subcontractors for the Project and the Owner and Owner's Separate Contractors.
- B. Project Scheduler: The Design-Builder shall provide a project scheduler to coordinate the scheduling activities of the Contract, to prepare an overall Project Schedule, and to monitor and update the Project Schedule periodically in accordance with the Contract Documents.

1.5 COORDINATION ACTIVITIES

- A. Coordination activities of Design-Builder's project manager include, but are not limited to, the following:
 - 1. Provide overall coordination of the Work.
 - 2. Coordinate use of access shared with other contractors to workspaces and workspaces shared with other contractors.
 - 3. Coordinate product selections for compatibility with products selected under this Contract for the Project. Identify to Owner and Owner's Technical Advisor incompatibilities between products selected under this Contract for the Project.
 - 4. Provide overall coordination of temporary facilities and controls.
 - 5. Coordinate, schedule, and approve interruptions of permanent and temporary utilities, including those necessary to make connections for temporary services.
 - 6. Coordinate construction and operations of the Work with work performed under each other Separate Contract for the Project and the Owner's construction forces.

7. Prepare Coordinated Composite Drawings, in collaboration with the appropriate Subcontractors for the Project, to coordinate the Work for the Project, including Owner's Separate Contractors, if applicable.
8. Coordinate sequencing and scheduling of the Work. Include the following:
 - a. Initial Coordination Meeting: At the earliest possible date, the Design-Builder will arrange and conduct a meeting with all Subcontractors, Owner, Owner's Separate Contractors, where appropriate, for the Project for sequencing and coordinating the Work of the Project.
9. Provide quality assurance and quality control services specified in Section 014000 – Quality and Code Requirements.
10. Coordinate sequence of activities to accommodate tests and inspections, and coordinate schedule of tests and inspections.
11. Provide information necessary to adjust, move, or relocate existing utility structures affected by construction.
12. Provide progress cleaning of all Contract work areas and coordinate progress cleaning of areas or pieces of equipment where more than one contractor has worked.
13. Coordinate cutting and patching.
14. Coordinate protection of the Work.
15. Coordinate fire-stopping
16. Coordinate completion of punch list items.
17. Coordinate preparation of As-Built Drawings and specifications.
18. Print and submit all required Project turnover documents.
19. Coordinate preparation of operation and maintenance manuals.]]

B. Responsibilities of Design-Builder for the Work include, but are not limited to, the following:

1. Provide common-use field office for use by all personnel engaged in construction activities.
2. Provide telephone service for common-use facilities.
3. Provide coordination for temporary facilities and controls.

1.6 GENERAL REQUIREMENTS OF CONTRACTS

A. Extent of Contract: The work of the Design-Builder and its Subcontractors shall include but not be limited to the following Work:

1. The Work described in this section shall be complete systems and assemblies, including products, components, accessories, and installation required by the respective Contract Documents.
2. Trenches and other excavation.
3. Blocking, backing panels, sleeves, and metal fabrication supports for the Work.
4. Furnishing of access panels for all of the Work, including installation of access panels located in the substrate of ceilings, walls and floors.
5. Equipment pads.
6. Roof-mounted equipment curbs.
7. Painting for the Work.
8. Cutting and Patching.
9. Firestopping.
10. Other Work required by the Contract Documents.

B. Not Used.

C. Temporary Facilities and Controls: In addition to specific responsibilities for temporary facilities and controls indicated in this Section and in Section 015000 - Temporary Facilities and Controls, Design-Builder is responsible for the following:

1. Installation, operation, maintenance, and removal of each temporary facility necessary for its own normal construction activity, and costs and use charges associated with each facility, except as otherwise provided for in this Section.
2. Plug-in electric power cords and extension cords, supplementary plug-in task lighting, and special lighting necessary exclusively for its own activities.
3. Its own field office complete with necessary furniture, utilities, and telephone service.
4. Its own storage and fabrication sheds.
5. Temporary enclosures and weather protection for its own construction activities.
6. Staging and scaffolding for its own construction activities.
7. General hoisting facilities for its own construction activities.
8. Waste disposal facilities, including collection and legal disposal of its own hazardous, dangerous, unsanitary, or other harmful waste materials.
9. Progress cleaning of work areas affected by its operations on a daily basis.
10. Secure lockup of its own tools, materials, and equipment.
11. Construction Aids and miscellaneous services and facilities necessary exclusively for its own construction activities.

1.7 CONSTRUCTION WORK

A. The Design-Builder's Work includes all of the Work required in the Contract Documents including, but not limited to, the following:

1. Site preparation, including clearing, building demolition and relocations, and earthwork.
2. Site improvements, including roadways, parking lots, pedestrian paving, site development furnishings and equipment, and landscaping.
3. Site water supply and distribution.
4. Site sanitary sewerage.
5. Site storm drainage.
6. Site fuel distribution.
7. Tunnels for site utilities.
8. Selective demolition.
9. Foundations, including footings, foundation walls, and piles.
10. Slabs-on-grade, including earthwork, sub-drainage systems, and insulation.
11. Below-grade building construction, including excavation, backfill, and thermal and moisture protection.
12. Superstructure, including floor and roof construction **[and] [sprayed fire-resistive materials] [and] [board fire protection]**. [NTD: Schiff to de-bold and keep all of these types of recommendations.]
13. Exterior closure, including walls, **[parapets,]** doors, windows, **[and louvers]**.
14. Roofing, including coverings, flashings **[roof specialties] [and] [glazed openings]**.
15. Interior construction, including partitions, doors, **[interior glazed openings,]** and fittings.
16. Fire-protection specialties.
17. Stairs, including railings and finishes.
18. Interior finishes **[finish carpentry] [architectural woodwork]** and built-in casework.
19. Conveying systems, including **[elevators] [wheelchair lifts] [escalators] [and] [cranes]**.
20. Equipment, including the following:
 - a. .
 - b. Projection screens.
 - c. Loading dock equipment.
 - d. Waste compactors.
 - e. Foodservice equipment.
 - f.
 - g. Laboratory fume hoods.
 - h. Bio-safety Cabinets.
 - i. Glasswashers.
 - j. Glassware ovens.

- k. Autoclaves.
 - l. Environmental Rooms.
 - m. Fume hoods.
-
- 21. Furnishings, including but not limited to fixed laboratory casework.
 - 22. Not Used.
 - 23. Project Controls, including scheduling and cost support and meetings required by the Contract Documents.
-
- 24. Temporary facilities and controls that are not otherwise specifically assigned to other contracts.
 - 25. Sediment and erosion control.
 - 26. Unpiped sewers and drainage, including drainage ditches, dry wells, stabilization ponds, and containers.
 - 27. Stormwater control.
 - 28. Unpiped temporary toilet fixtures, wash facilities, and drinking water facilities, including disposable supplies.
 - 29. Temporary enclosure for building exterior.
 - 30. Temporary roads and paved areas.
 - 31. Dewatering facilities and drains.
 - 32. Excavation support and protection for the Work.
 - 33. Project identification and temporary signs.
 - 34. General waste disposal facilities.
 - 35. Pest control.
 - 36. Temporary stairs.
 - 37. Temporary fire-protection facilities.
 - 38. Barricades, warning signs, and lights.
 - 39. Site enclosure fence.
 - 40. Covered walkways.
 - 41. Security enclosure and lockup.
 - 42. Environmental protection.
 - 43. Restoration of Owner's existing facilities used as temporary facilities.
 - 44. Temporary heating, cooling, and ventilation for Work before weathertight enclosure of building are complete.
 - 45. Temporary heating, cooling, and ventilation after permanent enclosure of building are complete.
-
- 46. Site special plumbing systems.
 - 47. Plumbing fixtures.
 - 48. Domestic water distribution.
 - 49. Sanitary waste.
 - 50. Storm water drainage.
 - 51. Special plumbing systems, including but not limited to the following:
 - a. Compressed air.
 - b. Deionized water.
 - c. Distilled water.
 - d. Fuel oil.
 - e. Natural gas.
 - f. Medical gas.
 - g. Vacuum.
 - h. Acid waste.
-
- 52. Fire protection systems.
 - 53. Special fire suppression systems, including the following:
 - a. Foam fire-extinguishing systems.
 - b. Clean-agent extinguishing systems.

54. Plumbing connections to equipment furnished by all other contracts.
55. Piped sewerage and drainage.
56. Piped gas service.
57. Piped water service.
58. Piped temporary toilet fixtures, wash facilities, and drinking water facilities.
59. Temporary standpipe for Fire Department use.
60. Plumbing connections to existing systems and temporary facilities and controls furnished by other contracts.
61. Temporary heating, cooling, and ventilation for plumbing Work before weathertight enclosure of building is complete.
62. Site steam distribution.
63. Site hydronic distribution.
64. Energy supply, including [oil] [gas] [steam] [hot- and chilled-water] supply systems.
65. HVAC systems and equipment, including exhaust and make-up air systems.
66. HVAC instrumentation and controls.
67. HVAC testing, adjusting, and balancing.
68. Building automation system.
69. Mechanical connections to equipment furnished by all other contracts.
70. Temporary heating, cooling, and ventilation for HVAC Work before weathertight enclosure of building are complete.
71. Site electrical distribution.
72. Site lighting.
73. Site communications and security, including telephone and data systems.
74. Electrical service and distribution.
75. Exterior and interior lighting and light pole bases.
76. Communication and security.
77. Fire alarm and detection systems.
78. Special electrical systems, including the following:
 - a. Uninterruptible power supply systems.
 - b. Packaged engine generator systems.
 - c. Battery power systems.
 - d. Cathodic protection.
 - e. Electromagnetic shielding systems.
 - f. Lightning protection systems.
 - g. Unit power conditioners.
 - h. Power generation systems.
79. Electrical connections to equipment furnished by all other contracts.
80. Electric power service and distribution.
81. Lighting, including site lighting.
82. Fire alarm and detection systems.
83. Electrical connections to existing systems and temporary facilities and controls.
84. Not Used.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 011200

SECTION 012100 - ALLOWANCES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections, Notice to Proceed and Allowance Allocation Form apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements governing allowances.
 - 1. Certain items may be specified in the Contract Documents as allowances. Allowances have been established in lieu of additional requirements and to defer selection of actual materials and equipment to a later date when direction will be provided to the Design-Builder.
- B. Types of allowances include the following:
 - 1. Procurement Exemption (lump-sum) allowances.
 - 2. Quantity of Work (unit-cost) allowances.
 - 3. Quantity of Funds (contingency) allowances.
- C. Related Sections:
 - 1. General Conditions, Article 7 – Changes in the Work.
 - 2. General Conditions, Article 8 – Payment.
 - 3. Section 012900 – Payment Procedures.
 - 4. Section 013300 – Submittal Procedure.
 - 5. Individual Specification Sections for items of Work covered by allowances.

1.3 SELECTION AND PURCHASE

- A. At the earliest practical date after award of the Contract, advise the Owner of the date when final selection and purchase of each product or system described by an allowance must be completed to avoid delaying the Work.
- B. At the Owner's request, obtain proposals for each allowance for use in making final selections. Include recommendations that are relevant to performing the Work.
- C. Purchase products and systems selected by the Owner from the designated supplier.

1.4 SUBMITTALS

- A. Submit proposals for purchase of products or systems included in allowances, in the form specified for Change Orders.
- B. Submit invoices or delivery slips to show actual quantities of materials delivered to the site for use in fulfillment of each allowance.
- C. Submit time sheets and other documentation to show labor time and cost for installation of allowance items that include installation as part of the allowance.
- D. Coordinate and process submittals for allowance items in same manner as for other portions of the Work.

1.5 COORDINATION

- A. Coordinate allowance items with other portions of the Work. Furnish templates as required to coordinate installation.
- B. The Design-Builder shall include the dollar value of each scheduled allowance number as a separate line item in the Schedule of Values and identify each allowance with Section number 012100.
- C. The Owner shall provide the Design-Builder with the Notice to Proceed, and request the Design-Builder to sign an Allowance Allocation form, prior to proceeding with the Work of an allowance.

1.6 PAYMENT

- A. Refer to Section 012900 – Payment Procedures, for processing an Application for Payment.
- B. The Design-Builder shall include a copy of the approved Allowance Allocation form issued by the Owner, with the Application for Payment, for payment of lump sum or unit cost allowance work.
- C. The Design-Builder shall complete and provide an Allowance Allocation form, provided by the Owner, and supporting documentation in accordance with General Conditions, Article 7 – Changes in the Work for payment of a contingency allowance.

1.7 LUMP-SUM AND QUANTITY OF WORK [UNIT-COST] ALLOWANCES

- A. Allowance shall include cost to the Design-Builder of specific products and materials ordered or selected by the Owner under allowance and shall include taxes, freight, and delivery to the Project site.
- B. The Design-Builder's costs for receiving and handling at the Project site, labor, installation, overhead and profit, and similar costs related to products and materials ordered by the Owner under allowance shall be included as part of the GMP and not part of the allowance.

1.8 QUANTITY OF FUNDS [CONTINGENCY] ALLOWANCES

- A. Use the quantity of funds [contingency] allowance only as directed by the Owner for the Owner's purposes and only by Change Orders in accordance with General Conditions, Article 7 – Changes in the Work that indicate amounts to be charged to the allowance.
- B. The Design-Builder's overhead, profit, and related costs for products and equipment ordered by the Owner under the contingency allowance are included in the allowance and are not part of the GMP. These costs include delivery, installation, taxes, insurance, equipment rental, and similar costs.
- C. Change Orders authorizing use of funds from the contingency allowance will include Design-Builder's related costs and overhead and profit margins in accordance with General Conditions, Article 7.
- D. At Project closeout, the unused amounts remaining in the contingency allowance shall be credited to the Owner by Change Order.

1.9 ADJUSTMENT OF ALLOWANCES

- A. Allowance Adjustment: To adjust allowance amounts and scope of Work, prepare a Change Order proposal based on the difference between purchase amount and the allowance, multiplied by final measurement of work-in-place where applicable. If applicable, include reasonable allowances for cutting losses, tolerances, mixing wastes, normal product imperfections, and similar margins.

- 1. Include installation costs in purchase amount only where indicated as part of the allowance.

2. If requested, prepare explanation and documentation to substantiate distribution of overhead costs and other margins claimed.
3. Submit substantiation of a change in scope of work, if any, claimed in Change Orders related to unit-cost allowances.
4. The Owner reserves the right to establish the quantity of work-in-place by independent quantity survey, measure, or count.
5. No change to the Design-Builder's indirect expense is permitted for selection of higher- or lower-priced materials or systems of the same scope and nature as originally indicated.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine products covered by an allowance promptly on delivery for damage or defects. Return damaged or defective products to manufacturer for replacement.

3.2 PREPARATION

- A. Coordinate materials and their installation for each allowance with related materials and installations to ensure that each allowance item is completely integrated and interfaced with related work.

3.3 SCHEDULE OF ALLOWANCES

END OF SECTION 012100

SECTION 012300 – ALTERNATES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for alternates.

1.3 DEFINITIONS

- A. Alternate: An amount proposed by Design-Builder and included in the Design-Builder’s Subcontractor Bid Package for certain work that may be added to or deducted from the GMP if the Owner decides to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.
 - 1. Alternates described in this Section are part of the Work only if incorporated into the Contract.
 - 2. The cost or credit for each alternate is the net addition to or deduction from the GMP to incorporate alternate into the Work. No other adjustments are made to the GMP.

1.4 PROCEDURES

- A. Coordination: Modify or adjust affected adjacent work as necessary to completely integrate work of the alternate into Project.
 - 1. Include as part of each alternate, miscellaneous devices, accessory objects, and similar items incidental to or required for a complete installation whether or not indicated as part of alternate.
- B. Notification: Immediately following award of the Contract, notify each party involved, in writing, of the status of each alternate. Indicate if alternates have been accepted, rejected, or deferred for later consideration. Include a complete description of negotiated modifications to alternates.
- C. Execute accepted alternates under the same conditions as other Work of the Contract.
- D. Schedule: A schedule of alternates is included at the end of this Section. Specification Sections referenced in schedule contain requirements for materials necessary to achieve the work described under each alternate.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 [SCHEDULE OF ALTERNATES]

END OF SECTION 012300

| |

SECTION 012900 - PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, (including but not limited to, the Drawings, individual Specification Sections, and the Schedule of Values), Design-Builder Pencil Copy and Application for Payment, apply to this Section.

1.2 SUMMARY

- A. This Section specifies administrative and procedural requirements necessary to prepare and process Applications for Payment.
- B. Related Sections:
 - 1. General Conditions, Article 8 - Payment, for requirements governing provisions for payment.
 - 2. General Conditions, Article 20 – Opportunity Programs, for requirements governing minority participation.
 - 3. Section 012100 – Allowances, for procedural requirements governing the handling and processing of allowances, if applicable. |
 - 4. Section 017700 – Contract Closeout Requirements, for administrative contract closeout requirements.
 - 5. Section 018113 – Sustainable Design Requirements, for administrative requirements governing submittal of cost breakdown information required for LEED documentation, if applicable. |

1.3 DEFINITIONS

- A. Schedule of Values: A form in the Contract Documents, which establishes minimum level of payment detail to formulate an Application for Payment.
- B. Design-Builder's Pencil Copy: A form provided by the Owner, which allows Design-Builder to provide an estimate for an Application for Payment. When approved by the Owner, Design-Builder's Pencil Copy formulates the basis of Design-Builder's Application for Payment.
- C. Application for Payment: A form provided by the Owner, which provides certification by the Design-Builder for payment.

1.4 SCHEDULE OF VALUES

- A. Coordination: Coordinate preparation of the Schedule of Values with the Owner.
- B. The Design-Builder shall allocate portions of the GMP to Design Work, Builders Fixed Design Fee, Commissioning, Integrated Workplace Management System, Design Builder Pre-Construction Fee, Design Builder Management Fee, Subcontracts (including Trade Subcontracts), General Conditions, Design-Builder Contingency, and Buy-out Savings Contingency, labor, material, and major equipment costs to various portions of the Work as indicated on the form.
 - 1. Submit the Schedule of Values as required in the Contract.
 - 2. The Owner shall not approve any billing request until the applicable Schedule of Values is approved.
- C. Format and Content: Use model form provided in Contract Documents as a guide to establish line items for the Schedule of Values.

1. Arrange the Schedule of Values with separate columns to indicate the following for each item listed:
 - a. Dollar value of the following, as a percentage of the GMP to nearest one-hundredth percent, adjusted to total 100 percent.
 - 1) Design Work.
 - 2) Labor.
 - 3) Materials.
 - 4) Major Equipment.
 2. Provide a breakdown of GMP in enough detail to facilitate continued evaluation of Applications for Payment and progress reports. Provide multiple line items for principal Subcontract amounts in excess of five percent of the GMP.
 - a. Include separate line items under Design-Builder and principal Subcontracts for LEED documentation, if applicable and other Project closeout requirements in an amount totaling five percent of the GMP and Subcontract amount.
 3. Round amounts to nearest whole dollar; total shall equal the GMP.
 4. Allowances: If applicable, provide a separate line item in the Schedule of Values for each allowance.
 5. Each item in the Schedule of Values and Applications for Payment shall be complete. Include total cost and proportionate share of general overhead and profit for each item, except Lump Sum and Quantity of Work Allowances.
 6. Schedule of Values Updating: The Owner may require the Design-Builder to revise its Schedule of Values. Further, the Owner reserves the right to accept only those cost distributions which, in the Owner's opinion, are reasonable, equitably balanced and correspond to estimated quantities in Contract Documents.
- D. The Design-Builder shall provide, for Owner's review and approval, a proposed list of tangible and verifiable field installation materials and units of measures that will form the basis of determining the physical percent of completion for each Activity ID in the Project Schedule and Schedule of Values related to Construction and Start-Up for both the Design-Builder and Design-Builder's Subcontractors. Once the proposed list is approved by the Owner, Design-Builder shall assign the appropriate values of each field installation materials or unit of measure to the appropriate Construction and Start-Up Activity IDs in the Project Schedule. The Owner will be notified of all changes to the assigned quantities or categories in the Monthly Report. The list of estimated material quantities or other measurable items applied to each Activity ID will form the basis of the Field Quantity Installation Report. The Field Quantity Installation Report shall be updated monthly and be used to determine the physical percentage of completion for each Construction and Start-up Activity ID, which forms the basis for payment. Examples of construction material quantities and units of measure expected to be utilized by Design-Builder's Field Quantity Installation Report include, but are not limited to:
1. Square feet of form work;
 2. Number of drilled piers/caissons;
 3. Cubic yards of concrete;
 4. Tons of reinforcing steel or structural steel;
 5. Linear feet of handrail;
 6. Square feet of exterior enclosure materials;
 7. Square feet of flooring material;
 8. Square feet of interior division materials;

9. Linear feet of weld;
10. Linear feet of pipe;
11. Linear feet of pipe rack;
12. Number of large bore piping spools;
13. Linear feet of electrical or low voltage raceway;
14. Linear feet of electrical or low voltage conductor or cable;
15. Number of electrical or low voltage terminations; and
16. Any other quantity measurement approved by Owner that provides confirmation of the physical completion of the Work that can be tangibly measured and verified.

1.5 MONTHLY APPLICATIONS FOR PAYMENT

- A. Each Application for Payment shall be consistent with previous applications and payments as approved by the Owner and paid for by the Owner.
 1. Not Used.
 2. Payment for allowance items and stored materials involve additional requirements.
 3. Application for Payment at time of Substantial Completion, and final Application for Payment involve additional requirements.
- B. Payment Application Times: Billing request may be submitted to the Owner once each month.
 1. Submit Design-Builder's Pencil Copy billing request seven Days prior to the Payment Application due date for review by the Owner.
- C. Payment Forms: All forms and documents required for payment shall be provided by the Owner. Template forms and documents may also be available on the Dormitory Authority's web site www.dasny.org.
- D. Preliminary Procedure: The Design-Builder may request from the Owner a Design-Builder's Pencil Copy form. Where indicated on the form, the Design-Builder shall enter a billing request, either dollar amount or percentage complete for each item number requesting payment.
 1. If applicable, the Design-Builder shall obtain from the Owner, an Allowance Notice to Proceed for Allowance items and an Agreement for Materials Stored Off-Site prior to billing.
 2. Submit Design-Builder's Pencil Copy billing request to the Owner for approval.
 3. The Design-Builder shall provide updated documentation to the Owner in accordance with General Conditions, Article 20 – Opportunity Programs.
- E. Procedure: Upon the Owner's approval of the Design-Builder's Pencil Copy billing request, payment documents will be provided to the Design-Builder. The Design-Builder shall complete each document and submit two copies of all documents with original signature and notary where indicated on forms, the following:
 1. Application for Payment.
 2. Compliance Report.
 3. Design-Builder and Subcontractor Certifications Form.
 4. Design-Builder's Certified Payroll Form.

5. Allowance Allocation Form, if applicable.
6. Lien Waivers.

F. Payroll Forms: The Design-Builder and all of its Subcontractors will certify their payrolls and keep these certified payroll records on Site and available and shall submit original copies of the Design-Builder and Subcontractor Certifications Form and Design-Builder's Certified Payroll Form with each Application for Payment.

G. Transmittal: Sign and notarize where indicated on each document, submit two original copies to Owner.

1. Transmit each copy with a transmittal form listing attachments and recording appropriate information about payment.

H. Stored Materials: The Owner will provide a Contract for Materials Stored Off-Site and specific forms that the Design-Builder must complete and submit to the Owner, including but not limited to:

1. Include in the Design-Builder's Pencil Copy billing request amounts applied for materials or equipment purchased or fabricated and stored, but not yet installed.
2. Differentiate between items stored on-site and items stored off-site.
3. Provide certificate of insurance, evidence of transfer of title to the Owner, and consent of surety to payment, for stored materials.
4. Provide supporting documentation that verifies amount requested, such as paid invoices. Match amount requested with amounts indicated on documentation; do not include overhead and profit on stored materials.
5. Provide summary documentation for stored materials indicating the following:
 - a. Materials previously stored and included in previous Applications for Payment.
 - b. Work completed for this Application utilizing previously stored materials.
 - c. Additional materials stored with this Application.
 - d. Total materials remaining stored, including materials with this Application.

I. Payment: Timely payment by the Owner to the Design-Builder is governed by Section 2880 of the Public Authorities Law.

J. Liens: Upon receipt of a lien, the Owner shall deduct a sum of one and one-half (1 ½) times the amount stated to be due in the notice of lien from the Design-Builder's Application for Payment. Upon official receipt of discharge of lien, the Owner shall provide payment as stated above and in the Contract Documents.

1.6 APPLICATION FOR PAYMENT AT SUBSTANTIAL COMPLETION

A. Preliminary Procedure: After issuance of the executed Notice of Substantial Completion, submit a Design-Builder's Pencil Copy billing request showing 100 percent completion for the portion of the Work claimed as complete at Substantial Completion.

1. Submit Design-Builder's Pencil Copy billing request to the Owner for approval.
2. The Design-Builder shall provide final documentation to the Owner in accordance with General Conditions, Article 20 – Opportunity Programs.

B. Reduction of Retainage: The Design-Builder may request a reduction of retainage upon Substantial Completion of the Work in accordance with the following process:

1. The Design-Builder submits to the Owner a written request to have retainage reduced and provides a cost estimate and schedule to complete all remaining Work items indicated on the executed Notice of Substantial Completion.
2. The Owner shall deduct from the sum two times the value of remaining items of Work to be completed or corrected.

3. The Owner will provide the Design-Builder with General Release and Consent of Surety forms based on the amount of reduction. The Design-Builder shall complete each document and submit three copies of each document with original signature & notary where indicated on forms.
 4. The Owner shall hold payment until receipt of completed General Release and Consent of Surety forms.
- C. Procedures: Upon the Owner approval of Design-Builder's Pencil Copy billing request, payment documents will be provided to the Design-Builder. The Design-Builder shall complete each document and submit two copies of all documents with original signature and notary where indicated on forms, the following:
1. Application for Payment.
 2. Compliance Report.
 3. Design-Builder and Subcontractor Certifications Form
 4. Design-Builder's Certified Payroll Form.
- D. Payroll Forms: The Design-Builder and all of its Subcontractors shall submit original copies of the Design-Builder and Subcontractor Certifications Form and Design-Builder's Certified Payroll Form.
- E. Transmittal: Sign and notarize where indicated on each document, submit two original copies to Owner.
- F. Payment: Timely payment by the Owner to the Design-Builder is governed by Section 2880 of the Public Authorities Law.
- G. Liens: Upon receipt of a lien, the Owner shall deduct a sum of one and one-half (1 ½) times the amount stated to be due in the notice of lien from the Design-Builder's Application for Payment. Upon official receipt of discharge of lien, the Owner shall provide payment as stated above and in the Contract Documents.
- 1.7 FINAL APPLICATION FOR PAYMENT (same as contract closeout documents)
- A. Contract Compliance: The Design-Builder shall comply with the Requirements of General Conditions, Section 26.05 – Governing Law and Venue.
- B. Preliminary Procedure: All Work and Extra Work of the Contract and all requirements of Section 017700 – Contract Closeout Requirements must be complete and approved prior to commencement of final Application for Payment.
1. The Design-Builder shall request and submit to the Owner a final Design-Builder's Pencil Copy that will formulate the final Application for Payment.
 2. The Design-Builder shall provide outstanding documentation to the Owner in accordance with General Conditions, Article 20 – Opportunity Programs.
- C. Procedures: Upon the Owner approval of Design-Builder's Pencil Copy billing request, final Application for Payment and Contract closeout documents will be provided to the Design-Builder. The Design-Builder shall complete each document and submit two copies of all documents with original signature and notary, where indicated on the forms, the following:
1. Final Application for Payment including remaining Retainage.
 2. Final Compliance Report.
 3. Design-Builder and Subcontractor Certifications Form
 4. Design-Builder's Certified Payroll Form.
 5. Release Form -- Final Payment to Design-Builder.
 6. Consent of Surety -- Final Payment to Design-Builder, with power of attorney.
- D. Payroll Forms: The Design-Builder and all of its Subcontractors shall submit original copies of the Design-Builder and Subcontractor Certifications Form and Design-Builder's Certified Payroll Form.

- E. Transmittal: Sign and notarize where indicated on each document, submit two original copies to the Owner.
- F. Final Payment: Timely payment by the Owner to the Design-Builder is governed by Section 2880 of the Public Authorities Law.
- G. Liens: Upon receipt of a lien, the Owner shall deduct a sum of one and one-half (1 ½) times the amount stated to be due in the notice of lien from the Design-Builder's final Application for Payment. Upon official receipt of discharge of lien, the Owner shall provide a credit for the value of the lien as stated above and in the Contract Documents.

PART 2 – PRODUCTS (Not Used)

PART 3 – EXECUTION (Not Used)

END OF SECTION 012900

SECTION 013100 - PROJECT MANAGEMENT AND COORDINATION

PART 1 – GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Scope of Work Specification Sections and Owner’s Project Management Program system, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative provisions for coordinating construction operations on the Project including, but not limited to, the following:

- 1. General project coordination procedures.
- 2. Administrative and supervisory personnel.
- 3. Coordination drawings.
- 4. Requests for Information (RFIs).
- 5. Project Management Program software site.
- 6. Project meetings.

- B. The Design-Builder and its Subcontractors shall participate in coordination requirements. Refer to Section 011200 – Contract Summary of Work for certain areas of responsibility.

- C. Related Sections:

- 1. Section 011200 - Contract Summary of Work, for a description of the division of work and responsibility for coordination activities not in this Section.
- 2. Section 013200 - Construction Progress Documentation, for preparing and submitting the construction portion of Design-Builder’s Project Schedule.
- 3. Section 017700 – Contract Closeout Requirements, for coordinating closeout of the Contract.
- 4. Section 019113 - General Commissioning Requirements, for coordinating the Work with Owner’s Commissioning Authority.

1.3 DEFINITIONS

- A. RFI: Request from the Owner Owner’s Technical Advisor or Design-Builder seeking information from each other during design and construction.

1.4 [COORDINATION]

- A. Coordination for Single Contract Project: Coordinate design, procurement, construction, and commissioning operations included in the Contract Documents to ensure efficient and orderly installation of each part of the Work. Coordinate construction operations included in different Contract Document Sections that depend on each other for proper installation, connection, and operation.

- 1. The Design-Builder shall utilize the Milestone Dates included in the Contract Documents to prepare a Project Schedule using a CPM scheduling method in accordance with Section 013200 – Construction Progress Documentation.
- 2. Schedule construction operations in sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
- 3. Coordinate installation of different components to ensure maximum performance and accessibility for required maintenance, service, and repair.
- 4. Make adequate provisions to accommodate items scheduled for later installation.

- B. Not Used.
- C. Administrative Procedures: Coordinate scheduling and timing of required administrative procedures with other Work activities and activities of other contractors to avoid conflicts and to ensure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:
 - 1. Coordination of the Design-Builder's Project Schedule for the Work.
 - 2. Coordination of the commissioning process and activities.
 - 3. Preparation of the Schedule of Values.
 - 4. Entering dates that each required submission item listed on the Design-Builder's Design Submission Schedule will be submitted, coordinated with the Project Schedule.
 - 5. Installation and removal of temporary facilities and controls.
 - 6. Delivery and processing of submittals.
 - 7. Progress meetings.
 - 8. Pre-installation conferences.
 - 9. Project closeout activities.
 - 10. Start-up, commissioning, and adjustment of systems.
- D. Conservation: Coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials. Coordinate use of temporary utilities to minimize waste.

1.5 COORDINATED COMPOSITE DRAWINGS

- A. Coordinated Composite Drawings - General: Prepare coordinated composite drawings in accordance with requirements in individual Sections, where installation is not completely shown on Shop Drawings, where limited space availability necessitates coordination, or if coordination is required to facilitate integration of products and materials fabricated or installed by more than one entity.
 - 1. Content: Project-specific information, drawn accurately to a scale large enough to indicate and resolve conflicts. Do not base coordinated composite drawings on standard printed data. Include the following information, as applicable:
 - a. Use applicable Drawings as a basis for preparation of coordinated composite drawings. Prepare sections, elevations, and details as needed to describe relationship of various systems and components.
 - b. Coordinate the addition of trade-specific information to the coordinated composite drawings by Design-Builder, its Subcontractors, and with Owner's Separate Contractors in a sequence that best provides for coordination of the information and resolution of conflicts between installed components before submitting for review.
 - c. Indicate functional and spatial relationships of components of architectural, structural, civil, mechanical, and electrical systems.
 - d. Indicate space requirements for routine maintenance and for anticipated replacement of components during the life of the installation.
 - e. Show location and size of access doors required for access to concealed dampers, valves, and other controls, including space required opening the access door.
 - f. Indicate required installation sequences.
 - g. Indicate dimensions shown on the Drawings. Specifically note dimensions that appear to be in conflict with submitted equipment and minimum clearance requirements. Provide alternate sketches to the Owner indicating all conflicts and providing a proposed resolution of such conflicts for Owner's review and comment. Minor dimension changes and difficult installations will not be considered changes to the Contract.
- B. Coordinated Composite Drawing Organization: Organize drawings as follows:

1. Floor Plans and Reflected Ceiling Plans: Show architectural and structural elements, and mechanical, plumbing, fire protection, fire alarm, and electrical Work. Show locations of visible ceiling-mounted devices relative to acoustical ceiling grid. Supplement plan drawings with **section** drawings where required to adequately represent the Work.
 2. Plenum Space: Indicate sub-framing for support of ceiling and wall systems, mechanical and electrical equipment, and related Work. Locate components within ceiling plenum to accommodate layout of light fixtures indicated on the Drawings. Indicate areas of conflict between light fixtures and other components.
 3. Mechanical Rooms: Provide coordinated composite drawings for mechanical rooms showing plans and elevations of mechanical, plumbing, fire protection, fire alarm, and electrical equipment.
 4. Structural Penetrations: Indicate penetrations and openings required for all disciplines.
 5. Slab Edge and Embedded Items: Indicate slab edge locations and sizes and locations of embedded items for metal fabrications, sleeves, anchor bolts, bearing plates, angles, door floor closers, slab depressions for floor finishes, curbs and housekeeping pads, and similar items.
 6. Mechanical and Plumbing Work: Show the following:
 - a. Sizes and bottom elevations of ductwork, piping, and conduit runs, including insulation, bracing, flanges, and support systems.
 - b. Dimensions of major components, such as dampers, valves, diffusers, access doors, cleanouts and electrical distribution equipment.
 - c. Fire-rated enclosures around ductwork.
 7. Electrical Work: Show the following:
 - a. Runs of vertical and horizontal conduit 1-1/4 inch diameter and larger.
 - b. Light fixture, exit light, emergency battery pack, smoke detector, and other fire alarm locations.
 - c. Panel board, switch board, switchgear, transformer, busway, generator, and motor control center locations.
 - d. Location of pull boxes and junction boxes dimensioned from column center lines.
 8. Fire Protection System: Show the following:
 - a. Locations of standpipes, mains piping, branch lines, pipe drops, and sprinkler heads.
 9. Review: The Owner will review coordinated composite drawings to confirm that the Work is being coordinated, but not for the details of the coordination, which are the Design-Builder's responsibility. If the Owner determines that the coordinated composite drawings are not being prepared in sufficient scope or detail, or are otherwise deficient, the Owner will so inform the Design-Builder, who shall make changes and resubmit. |
- C. Coordination Digital Data Files: Prepare coordination digital data files in accordance with the following requirements:
1. File Preparation Format: The Design-Builder shall coordinate with the Owner and use the same digital data software program, version, and operating system as the original Drawings.

1.6 KEY PERSONNEL

- A. Key Personnel Names: Within fifteen (15) Days after the Effective Date, submit a list of Key Personnel and their assignments with resume and job qualifications, including project manager, project architects and engineers, project scheduler, Cost Engineer, commissioning agent, superintendents and other personnel in attendance at the Project Site. Identify individuals and their duties and responsibilities; list addresses and telephone numbers, including home, office, and cellular telephone numbers, and email addresses. Provide names, addresses, and telephone numbers of individuals assigned as standbys in the absence of individuals assigned to the Project.

- B. Design-Builder shall not replace any such Key Personnel at any time without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. Design-Builder shall promptly replace any Key Personnel to which Owner reasonably objects in writing.

1.7 REQUESTS FOR INFORMATION (RFIs)

- A. General: Immediately on discovery of the need for additional information or interpretation of the Contract Documents, the Design-Builder shall prepare and submit an RFI in the form specified.

- 1. Coordinate and submit RFIs in a prompt manner so as to avoid delays in the Design-Builder's or its Subcontractors' Work.

- B. Content of the RFI: Include a detailed, legible description of item needing information or interpretation and the following:

- 1. Project name.
 - 2. Project number.
 - 3. Date.
 - 4. Name of Design-Builder.
 - 5. Name of Owner's Technical Advisor.
 - 6. RFI number, numbered sequentially.
 - 7. RFI subject.
 - 8. Specification Section number and title and related paragraphs, as appropriate.
 - 9. Drawing number and detail references, as appropriate.
 - 10. Field dimensions and conditions, as appropriate.
 - 11. Design-Builder's suggested resolution. If Design-Builder's solution(s) impacts the date of Substantial Completion or the GMP, Design-Builder shall state impact in the RFI. Such information shall not be considered "notice" of a dispute, Claim, or Change Order.
 - 12. Design-Builder's signature.
 - 13. Attachments: Include sketches, descriptions, measurements, photos, Product Data, Shop Drawings, coordination drawings, and other information necessary to fully describe items needing interpretation.

- a. *Include dimensions, thicknesses, structural grid references, and details of affected materials, assemblies, and attachments on attached sketches.*

- C. RFI Forms: The Owner's form with substantially the same content as indicated above.

- D. Owner's Action: The Owner and its Technical Advisor will review each RFI, and respond with its comments. Allow a reasonable amount of Business Days for the response for each RFI. RFIs received by the Owner or its Technical Advisor after 1:00 p.m. will be considered as received the following Business Day.

- 1. The following RFIs will be returned without action:
 - a. Requests for approval of submittals.
 - b. Requests for approval of substitutions.
 - c. Requests for coordination information already indicated in the Contract Documents.
 - d. Requests for adjustments in the date for Substantial Completion or the GMP.
 - e. Requests for interpretation of the Owner's or its Technical Advisor's actions on submittals.
 - f. Incomplete RFIs or inaccurately prepared RFIs.
 - 2. The Owner's or its Technical Advisor's action may include a request for additional information, in which case the Owner's or its Technical Advisor's time for response will date from time of receipt of additional information.
 - 3. Not Used.

- a. If the Design-Builder believes the RFI response has impacted the Critical Path of the Work and warrants change in the date of Substantial Completion or the GMP, notify the Owner in writing within fifteen (15) Days of receipt of the RFI response.
- E. On receipt of the Owner's or its Technical Advisor's action, update the RFI log and immediately distribute the RFI response to affected parties. Review response and notify the Owner and its Technical Advisor within five (5) Days if the Design-Builder disagrees with response.
- F. RFI Log: Coordinate and cooperate with the Owner to prepare, update and maintain the Owner's use of Project Management Program software log. The software log will include not less than the following:
 - 1. Project name.
 - 2. Name and address of Design-Builder.
 - 3. Name and address of Owner's Technical Advisor.
 - 4. RFI number including RFIs that were dropped and not submitted.
 - 5. RFI description.
 - 6. Date the RFI was submitted.
 - 7. Date Owner's response was received.
 - 8. Identification of related Minor Change in the Work and Proposal Request, as appropriate.
 - 9. Identification of related Field Order and Proposal Request, as appropriate.

1.8 PROJECT MANAGEMENT PROGRAM SOFTWARE SITE

- A. Coordinate and cooperate with the Owner for managing project communication and documentation until Contract Closeout. The Project Management Program software site may include, but is not limited to, the following functions:
 - 1. Project directory.
 - 2. Project correspondence.
 - 3. Meeting minutes.
 - 4. Contract modifications forms and logs.
 - 5. RFI forms and logs.
 - 6. Task and issue management.
 - 7. Submittals forms and logs.
 - 8. Payment application forms.
 - 9. Online document collaboration.
 - 10. Reminder and tracking functions.
 - 11. Archiving functions.

1.9 PROJECT MEETINGS

- A. General: The Design-Builder will schedule and conduct meetings at the Project Site, in accordance with the Contract Documents, unless otherwise indicated.
 - 1. Attendees: The Design-Builder will inform participants, including the Owner and its Technical Advisor and others whose presence is required, of date and time of each meeting.
 - 2. Agenda: The Design-Builder will prepare the meeting agenda and distribute the agenda to all invited attendees, including the Owner and its Technical Advisor.
 - 3. Minutes: The Design-Builder will record significant discussions and agreements achieved and distribute the meeting minutes to everyone concerned, including the Owner and its Technical Advisor.
- B. Design and Construction Kick-off Meetings: The Owner will schedule and conduct a design kick-off and construction kick-off meeting at the appropriate times before starting design and construction, respectively, at a time convenient to the Owner and its Technical Advisor, upon issuance of the Notice to Proceed.

1. The meetings shall review responsibilities and personnel assignments.
 2. Attendees: The Owner, Owner's Commissioning Authority, and its Technical Advisor and their consultants; the Design-Builder and its superintendent; major Subcontractors; and other concerned parties shall attend the meetings. Participants at the meeting shall be familiar with the Project and authorized to make binding decisions on matters relating to the Work.
 3. Agenda: The meeting agenda will include items of significance that could affect progress, including but not limited to the following:
 - a. Tentative design and construction schedule.
 - b. Phasing.
 - c. Critical work sequencing and long-lead items.
 - d. Designation of key personnel and their duties.
 - e. Lines of communications.
 - f. Procedures for processing field decisions and Change Orders.
 - g. Procedures for RFIs.
 - h. Procedures for testing and inspecting.
 - i. Procedures for processing Applications for Payment.
 - j. Distribution of the Contract Documents.
 - k. Submittal procedures.
 - l. Sustainable design requirements.
 - m. Preparation of As-Built Drawings and turnover documents.
 - n. Use of the premises.
 - o. Work restrictions.
 - p. Working hours.
 - q. Owner's occupancy requirements.
 - r. Responsibility for temporary facilities and controls.
 - s. Procedures for moisture and mold control.
 - t. Procedures for disruptions and shutdowns.
 - u. Construction waste management and recycling.
 - v. Parking availability.
 - w. Office, work, and storage areas.
 - x. Equipment deliveries and priorities.
 - y. First aid.
 - z. Security.
 - aa. Progress cleaning.
 - bb. Safety.
 4. Minutes: The Design-Builder will record and distribute meeting minutes for Owner's review.
- C. Progress Meetings: The Design-Builder will conduct progress meetings in accordance with the Contract Documents. The Design-Builder will produce meeting notes, to include an action item list, as a result of the Progress Meeting and circulate a draft to the Owner for comments. The date and time of the Progress Meeting will be subject to changes as determined by the Owner. All action items which come from this meeting will be documented and tracked, weekly, by the Design-Builder. All open action items will be tracked through completion and the open/closed action item list will be discussed at the next meeting. All matters bearing on the progress and performance of the Work and the Project Schedule since the preceding progress meeting, including any open action items shall be discussed and resolved, deficiencies in the Work or the methods being employed for the Work, and problems, difficulties, or delays which may be encountered will be discussed.
1. Attendees: Unless otherwise required by Owner, progress meetings shall be attended by the Owner's Commissioning Authority, Owner's Technical Advisor, Design-Builder, Design-Builder's Subcontractors applicable to the current Work, and each contractor, subcontractor, supplier, and other entity concerned with current progress or involved in planning, coordination, or performance of future activities shall be represented at these meetings. All participants at the meeting shall be familiar with the Project and authorized to make binding decisions on matters relating to the Work.

2. Agenda: Review and correct or approve minutes of previous progress meeting. Review other items of significance that could affect progress. Include topics for discussion as appropriate to status of the Project.
 - a. The Project Schedule: Review progress since the last meeting. Determine whether each activity is on time, ahead of schedule, or behind schedule, in relation to the Design-Builder's Project Schedule. Determine how construction behind schedule will be expedited; secure commitments from parties involved to do so. Discuss whether revisions to the Project Schedule are required to ensure that current and subsequent activities will be completed on or before the Milestone Dates.
 - 1) Review schedule for next scheduled progress meeting period.
 - b. Review present and future needs of each entity present, including the following:
 - 1) Interface requirements.
 - 2) Sequence of operations.
 - 3) Status of submittals.
 - 4) Deliveries.
 - 5) Off-site fabrication.
 - 6) Access.
 - 7) Site utilization.
 - 8) Temporary facilities and controls.
 - 9) Progress cleaning.
 - 10) Quality and work standards.
 - 11) Status of correction of deficient items.
 - 12) Field observations.
 - 13) Status of RFIs.
 - 14) Status of proposal requests.
 - 15) Pending changes.
 - 16) Status of Change Orders.
 - 17) Pending claims and disputes.
 - 18) Documentation of information for payment requests.
 3. Minutes: The Design-Builder will record and distribute the meeting minutes to each party present and to parties requiring information. Design-Builder shall issue draft of meeting notes and action item lists to the Owner for review and comment prior to finalizing.
 - a. Schedule Updating: Coordinate with the Owner to revise the Project Schedule after each progress meeting where revisions to the Project Schedule have been made or recognized. The Design-Builder will issue the revised Project Schedule concurrently with the report of each meeting.
- D. Daily Project Status Meetings: Upon Design-Builder's mobilization to the Site, Design-Builder shall organize and Design-Builder and its Subcontractors shall attend a daily meeting chaired by Design-Builder in which Design-Builder and its Subcontractors shall coordinate the Work and discuss the status of all activities scheduled to be worked on each Day (the "Daily Meeting"). Owner may attend and participate in the Daily Meetings.
1. Design-Builder shall use the prior Weekly Update to the Project Schedule to coordinate its activities with those of Owner, Design-Builder's Subcontractors, and any other parties performing the Work at the Site or elsewhere.
 2. During the Daily Meeting, Design-Builder and its Subcontractors shall report on safety, quality control, action items, work area status, corrective action program issues and opportunities. The attendees shall also discuss topics such as problem areas, recovery and mitigation plans, unresolved issues, risk exposure, and craft labor availability.

- E. Weekly Progress Meetings. Following the issuance of the Weekly Data and unless otherwise determined by Owner, the Design-Builder and Owner shall meet once each week to discuss the Design-Builder's Weekly Data. The Design-Builder will produce meeting notes, to include an action item list, as a result of the Weekly Progress meeting and circulate a draft to the Owner for comments prior to final issuance. Weekly meeting will be coordinated with the publication of the Design-Builder's Weekly Data. The date and time of the weekly meeting will be subject to changes as determined by the Owner. All action items which come from this meeting will be documented and tracked, weekly, by the Design-Builder. All open action items will be tracked through completion and the open/closed action item list will be included with the next Weekly Data.
- F. Commissioning Coordination Meetings: At least six months before scheduled commissioning activities, the Design-Builder and Owner shall commence jointly conducted onsite commissioning coordination meetings. Such meetings may, at the Owner's option, occur as necessary to properly monitor and coordinate the efforts of the Design-Builder's Work with the work Owner will be performing.
- G. Other Meetings: During performance of the Work, and in addition to the Weekly Meeting defined in the Contract Documents, Design-Builder shall attend and participate in other meetings as set forth in the Contract Documents or as Owner may request to update Owner as to the progress of the Work, discuss and resolve commercial or technical issues, or to discuss any issue regarding the Project as deemed necessary by Owner. The location of such meetings will be determined by Owner, and may be held daily, weekly, monthly or as otherwise requested by Owner.
- H. Meeting Reporting Requirements. Design-Builder shall provide Owner with minutes of all regular and scheduled project meetings, with the exception of internal meetings where Design-Builder confidential information is discussed. Owner shall retain and be afforded the right to amend the minutes of meetings attended by Owner before they are issued as "final" by Design-Builder.
- I. Pre-installation Meetings: The Design-Builder shall conduct pre-installation meetings at the Project Site before each construction activity that requires coordination with other construction and major assemblies of the Work requiring tight control and coordination.
1. Attendees: Installer and representatives of manufacturers and fabricators involved in or affected by the installation and its coordination or integration with other materials and installations that have preceded or will follow shall attend the meeting. The Design-Builder shall advise the Owner and Owner's Commissioning Authority of scheduled meeting dates.
 2. Agenda: Review progress of other construction activities and preparations for the particular activity under consideration, including requirements for the following:
 - a. Contract Documents.
 - b. Options.
 - c. Related RFIs.
 - d. Related Change Orders.
 - e. Purchases.
 - f. Deliveries.
 - g. Submittals.
 - h. Review of mockups.
 - i. Possible conflicts.
 - j. Compatibility problems.
 - k. Time schedules.
 - l. Weather limitations.
 - m. Manufacturer's written recommendations.
 - n. Warranty requirements.
 - o. Compatibility of materials.
 - p. Acceptability of substrates.
 - q. Temporary facilities and controls.
 - r. Space and access limitations.
 - s. Regulations of authorities having jurisdiction.

- t. Testing and inspecting requirements.
 - u. Installation procedures.
 - v. Coordination with other work.
 - w. Required performance results.
 - x. Protection of adjacent work.
 - y. Protection of construction and personnel.
- 3. The Design-Builder will record significant meeting discussions, agreements, and disagreements, including required corrective measures and actions.
 - 4. Reporting: The Design-Builder will distribute minutes of the meeting to each party present and to other parties requiring information.
 - 5. Do not proceed with installation if the meeting cannot be successfully concluded. Initiate whatever actions are necessary to resolve impediments to performance of the Work and reconvene the meeting at earliest feasible date.
- J. Monthly Executive Management Meetings. Owner and Design-Builder shall hold monthly project management meetings during the course of Work.
- 1. The purpose of the meetings shall be to review Design-Builder's Work progress, status of Project and resolve items of concern, problems, and outstanding disputes. The content of Design-Builder's Monthly Report will be discussed with Owner, and Design-Builder shall be prepared to answer Owner's questions. All matters bearing on the progress and performance of the Work and the Project Schedule since the preceding progress meeting, including any open action items shall be discussed and resolved, deficiencies in the Work or the methods being employed for the Work, and problems, difficulties, or delays which may be encountered will be discussed.
 - 2. Unless otherwise approved by Owner, attendance by Design-Builder shall include the executive level home office representative, home office project manager, design manager, procurement manager, and site manager. The meeting will be attended by Owner's executive-level management, project management, designated schedule and cost control personnel, and any other Owner designee.
 - 3. The date, time, and location of these meetings will be provided by the Owner.
 - 4. In addition to the Design-Builder's Monthly Report per General Requirements, Section 013200 3.2 (C), Design-Builder shall be required to provide Owner with a suggested meeting agenda and all anticipated handouts at least two (2) Business Days in advance of the meeting.
 - 5. The Design-Builder will produce the meeting minutes, to include an action item list, as a result of the Monthly Project Management Meeting and circulate a draft to Owner for comments.
- K. Project Closeout Conference: The Design-Builder shall schedule and conduct a Project closeout conference, at a time convenient to the Owner, but no later than sixty (60) Days prior to the scheduled inspection date for Substantial Completion.
- 1. The Owner will conduct the conference to review requirements and responsibilities related to the Project closeout.
 - 2. Attendees: The Owner, Owner's Commissioning Authority, and their consultants; the Design-Builder and its superintendent; major Subcontractors; and other concerned parties shall attend the meeting. Participants at the meeting shall be familiar with the Project and authorized to make binding decisions on matters relating to the Work.
 - 3. Agenda: Discuss items of significance that could affect or delay the Project closeout, including but not limited to the following:
 - a. Submission of turnover documents.
 - b. Status of systems start-up, testing and commissioning.

- c. Procedures required prior to inspection for Substantial Completion and for final inspection for acceptance.
 - d. Requirements for demonstration and training.
 - e. Preparation of Design-Builder's punch list.
 - f. Procedures for processing Applications for Payment at Substantial Completion and for Final Payment.
 - g. Coordination of Owner's Separate Contractors.
 - h. Owner's partial occupancy requirements.
 - i. Installation of Owner's furniture, fixtures, and equipment.
 - j. Responsibility for removing temporary facilities and controls.
4. Minutes: The Design-Builder conducting meeting will record and distribute meeting minutes.

PART 2 – PRODUCTS (Not Used)

PART 3 – EXECUTION (Not Used)

END OF SECTION 013100

SECTION 013200 - CONSTRUCTION PROGRESS DOCUMENTATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and the Milestone Dates in Contract, Exhibit D, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements to plan, schedule and document the progress of construction during the performance of the Work, including the following:
 - 1. The Project Schedule using Critical Path Method (CPM) schedule techniques and reports.
 - 2. Material location reports.
 - 3. Field condition reports.
 - 4. Special reports.
- B. Related Sections:
 - 1. Section 011200 – Contract Summary of Work, for preparing a combined Project Schedule.
 - 2. Section 013300 – Submittal Procedure, for submitting schedules and reports.
 - 3. Section 014000 – Quality and Code Requirements, for submitting a schedule of tests and inspections.

1.3 DEFINITIONS

- A. Not Used.
- B. Activity: A discrete part of the Work related to the Contract that can be identified for planning, scheduling, monitoring, and controlling the Project. Activities included in the Project Schedule consume time and resources.
 - 1. Critical Activity: An Activity on the Critical Path that has no total float.
 - 2. Predecessor Activity: An Activity that precedes another Activity in the network.
 - 3. Successor Activity: An Activity that follows another Activity in the network.
- C. Milestone Dates: Milestones Dates included in Contract, Exhibit D, which the Design-Builder is obligated to achieve and utilizes to formulate the Baseline Schedule. The Milestone Dates shall include the date of Substantial Completion.
- D. Level 1 (the Executive Summary Schedule): A high level, executive summary timeline intended to provide senior management with a simplified overview of the Project's plan, actual and current schedule status. The Executive Summary Schedule will be a summary roll up of the information and status contained in the Project Schedule (Level 3) Update. The Executive Summary Schedule shall include Activities representing each phase of work, building area, and major category of work included in the Project in a summary fashion, accounting for all elements of the Work using minimal detail. The Executive Summary Schedule shall individually identify all Milestone Dates in Exhibit D, as well as other milestones that the Design-Builder and Owner deem appropriate for the Project. The Executive Summary Schedule shall be incorporated and the status discussed in the Design-Builder's Monthly Report.
- E. Level 2 - The Project Summary Schedule shows design deliverables and owners review period, work package procurement plans, and construction schedule. The construction Activities in the Project Summary Schedule are a roll-up summary of the Project Schedule (Level 3) used primarily for a more detailed but summary presentation of

the Project Schedule's planned, actual, and projected status in design, procurement, construction, start-up, and commissioning. The Project Summary Schedule shall include Activities representing the incremental steps and efforts of the design, including submittals and approvals, procurement, construction, commissioning, and start-up phases of the Work and shall be identified by phases, areas, buildings, major equipment, and categories of Work Activities while distinguishing the Design-Builder's Work Activities from its Subcontractors' Work Activities. The Project Summary Schedule shall be sufficiently detailed to clearly show the Project's planned and current primary Critical Paths and the individual status of the Milestone Dates identified in Exhibit D.

- F. Level 3 - The Project Schedule is a detailed, resource loaded, CPM (Critical Path Method) schedule of construction Activities, using Oracle Primavera P6 Software version 18.8 (or future versions as determined by Owner) (the "**Schedule Software**") planned, created and executed by Design-Builder containing a sufficient level of detail, as outlined in the Contract Documents, to establish the necessary Work Activities required to complete the Work. The Project Schedule may include Activities representing design and procurement and shall include all construction, turnover, commissioning, start-up, and other detailed Activities that might reasonably affect the progress of the Work. The Project Schedule shall account for and include the Milestone Dates identified in Exhibit D. The Project Schedule shall be used in the weekly planning and monthly reporting of the Design-Builder's Work as well as for purposes of daily and weekly coordination between the Design-Builder, Owner, and others, and shall be coordinated with the Schedule of Values.
- G. Level 4 - A Detailed Coordination Schedule is any form of supplemental schedule details and Work Activities that further breakdown and define the Work that exists in the Project Schedule. Level 4 Detailed Daily Working Schedules shall always compliment, not replace the Project Schedule. In cases of conflict between the Detailed Coordination Schedule and the Project Schedule, the Project Schedule shall take precedence. When formalized, or used to direct the Work over a period greater than two (2) weeks, the Owner may direct that the Detailed Coordination Schedule shall be incorporated into the Project Schedule.
- H. Baseline Schedule: Initial schedule, prepared by the Design-Builder and approved by Owner, to complete the Work of the Contract in accordance with the Contract duration and starting point to which schedule updates are compared. Upon acceptance by Owner, the Baseline Schedule becomes the official schedule of the Contract Documents.
- I. CPM: Critical Path Method is a scheduling method used to plan and schedule construction projects where Activities are arranged based on activity relationships creating a time scaled network logic diagram. The Project Schedule must use industry-standard CPM schedule techniques and comply with the Contract Documents.
- J. PDM: Precedence Diagram Method follows the standard CPM calculations and allows for special logic relationships creating an interdependent relationship throughout the Project Schedule network.
- K. Critical Path: The longest connected chain of interdependent Activities through the Project Schedule network that establishes the minimum overall Project duration and contains no total float.
- L. Data Date: The date when the status of the Project Schedule is measured, showing the calendar start date for the update period.
- M. Workday: The unit of time for individual Activities. Indicate nonworking days and holidays incorporated into the Project Schedule Calendar in order to correlate with Contract durations.
- N. Float: The measure of leeway in starting and completing an Activity.
 - 1. Float time is not for the exclusive use or benefit of either the Owner or Design-Builder, but is a jointly owned, expiring Project resource available to both Parties as needed to meet schedule milestones, the Milestone Dates, and the Substantial Completion date.
 - 2. Free float is the amount of time an Activity can be delayed without adversely affecting the early start of the successor Activity and without impacting the Critical Path.

3. Total float is the measure of leeway in starting or completing an Activity without adversely affecting the contractually-required Substantial Completion date.

1.4 INFORMATIONAL SUBMITTALS

- A. Project Schedule: All Schedule submittals shall be of a size required to display the entire schedule for the entire Project in accordance with the Contract Documents, including architecture, engineering, procurement, construction, commissioning, and start-up.
 1. Format for Submittals. Submit electronic files for required schedule submittals in both native (.xer) and acrobat (.pdf) formats. Unless otherwise agreed to by Owner, Design-Builder will submit the updated electronic copies of the Project Schedules to the Owner on the last Day of each calendar month (the "Monthly Progress Schedule Update") and as requested, all underlying data, calculations, assumptions, procedures, analysis, spreadsheets, databases, etc., used in their development. In addition and if directed requested by Owner, the Design-Builder shall provide the same information to the Owner for any and all other project scheduling including recovery schedules and drafts.
 2. Submit a working electronic copy of any project schedule submission, using software indicated, and labeled to comply with requirements for submittals. Include type of schedule (baseline, project update, or recovery), Schedule Level, and date on label.
 3. Project Schedule Submittal Naming Nomenclature:
 - a. Development: Use the six-digit Owner's project number with a dash for example "123456-", followed by schedule type Level, followed by sequential alphabetical letter, "A" for example (123456-L1-A) during schedule development
 - b. Baseline: When the development schedule is approved as the Baseline Schedule, update the Alphabet index to Number as "00", for example (123456-L1-00)
 - c. Monthly Project Schedule Update: Use a sequential two-digit number; for example, "01" for the first update (123456-L1-01)
 - d. Recovery schedule: Indicate "R" following update number, for example, "04R" as recovery of the fifth update (123456-L1-04R)
 - e. Maintain the Project nomenclature for the filename of the native .xer file and as a prefix for all schedule reports for submission.
 4. Timing:
 - a. Use first day of the applicable calendar month as status date to capture progress from the beginning to the end of the previous month. For example, for the January Monthly Progress Report use the first day of February as the status date.
 - b. Submit the Monthly Project Schedule Update every fifth Business Day of the month.
 - c. Schedule Updates and Maintenance. Design-Builder shall facilitate ongoing planning and scheduling for the complete Project and accurately update and report schedule progress and forecasts. Design-Builder's Schedule update intervals shall be monthly.
 5. Design-Builder's Integration of Owner's and Owner's Separate Contractors' Work. During the development of the Project Schedule or later as deemed appropriate by the Owner, Design-Builder and Owner will mutually identify all items of work to be assigned and performed by the Owner or Owner's Separate Contractors for integration into the Project Schedule.
- B. CPM Reports: Concurrent with the submission of the Project Schedule and throughout the course of the Work, Design-Builder shall submit each of the following reports monthly. Format for each Activity in reports shall contain; applicable Activity ID, Activity description, Activity percent complete, original duration, remaining duration, actual duration, start and finish dates, late start and late finish dates, and total float in Business Days.

1. Activity Report: List of all Activities sorted by start or actual start date in each phase, area and level following the physical divisions of the Work.
2. Short Term Activity Report: Lists all Activities occurring from the update data date in a two month forward and one month backwards window.
3. Logic Report: List of preceding and succeeding Activities for all Activities, sorted in ascending order by start or actual start date. Include Activity ID and float path(s).
4. Total Float Report: Provide a cumulative list of total float from each update period with comments associated to any and all variances.
5. Procurement Report: List all procurement Activities sorted in order of the item being procured.
6. Crew Size Report: List of craft labor on the Project, per trade for the reporting period along with projected craft labor for the next 4 weeks.
7. Labor Projection Report: In addition to the submission of the initial “baseline” Project Schedule, Design-Builder to submit an overall project craft labor projection report. This craft labor projection report shall show the expected monthly craft labor and crew size, by trade, by area of the Project, by floor, by area of the applicable building, for each day of construction activity on the Project, throughout the entire duration of the Project with both base Contract and Change Order Work shown separately.
8. Narrative Report: The Design-Builder’s project scheduler shall describe the nature of the submission, interpretation of calculations, issues affecting progress and a milestone analysis comparing progress against the Baseline Schedule and each Update Schedule using the following outline:
 - a. An Executive Summary
 - b. Bid Packages Overview. Discussion of changes and variances by construction bid package and specific Recommendations.
 - c. Award Dates. Anticipated award dates, actual award dates, contractors selected and any recommendations for changes to the bid strategy going forward.
 - d. Baseline Acceptance. Actual and anticipated acceptance dates of Baseline Schedule for each prime Subcontractor and any associated issues.
 - e. Major Milestone Summary presented in tabular format as follows:
 - 1) Activity ID
 - 2) Activity Description
 - 3) Project Phase / Location
 - 4) Current Schedule Update Completion Date
 - 5) Last Schedule Update Completion Date
 - 6) Baseline Project Schedule Completion Date
 - 7) Variance from Prior Schedule Update (in Days)
 - 8) Activity Percent complete
 - 9) Cumulative Variation from Baseline (in Days)
 - f. Major issues encountered during the current and prior updates.
 - g. Summary of Progress/Status of Project. Progress since prior update and any issues encountered
 - h. Changes to Network Logic. Identification and explanation of Activities that have changed and that have a potential for impacting the Project Schedule or any Milestone Date, including the reason each adjustment was necessary, changes to the schedule including but not limited to Activity additions, changes in duration, changes to start and finish dates, changes in Activity durations in workdays, changes in float, changes in early and late finish dates, changes to any Milestone Date, including Substantial Completion, and changes to the network logic with supporting fragnets documenting the individual changes to the schedule (a claim digger report is not acceptable for the purposes of satisfying this requirement).

- i. Critical Path. Description of current Critical Paths and near Critical Paths to completion, including changes and variances from baseline Critical Path and variance from the Critical Path associated with the prior update (a claim digger report is not acceptable for the purposes of satisfying this requirement).
 - j. Delay Analysis and Responsibility. Discussion of any and all delays that have been experienced since the prior update as well as an assessment of responsibility for each delay. This section should also include a matrix presenting the delay associated with each schedule update and the cumulative project delay.
 - k. Upcoming Activities. Activity start and completions planned for the next update period.
 - l. Recovery Measures and Associated Cost Impacts. Recommendations for recovery of lost time and or acceleration/resequencing strategies. Associated cost impact estimates presented on an order of magnitude basis. (This obligation does not affect Owner's ability to demand a recovery plan pursuant to General Conditions, Section 013200 2.1 (H) below).
- C. Material Location Reports: Submit at monthly intervals.
 - D. Field Condition Reports: Submit at time of discovery of differing conditions and update weekly.
 - E. Special Reports: Submit at time of unusual event.
 - F. Qualification Data: For Project Scheduler and Cost Engineer.

1.5 QUALITY ASSURANCE

- A. Project Scheduler Qualifications: An experienced specialist in CPM scheduling and reporting, with capability of producing CPM reports and diagrams within timeframes requested by the Owner. The project scheduler shall have or be able to obtain certification as a Planning and Scheduling Professional (PSP) or have a minimum of five years of demonstrated experience scheduling large capital projects, or have other experience scheduling capital projects that the Owner, in its sole and exclusive discretion, finds acceptable.
- B. Prescheduling Conference: Within ten (10) Days after the Effective Date, Owner and Design-Builder, including their respective project controls, designated project management personnel, information technology and finance personnel, will conduct a conference (the "**Project Controls Kickoff Meeting**") at the Project Site or other location determined by Owner to discuss the project controls, schedule, hosting access, schedule links, invoicing, cost reporting, change management, risk management, and contingency management requirements and project procedures of the project as discussed in this Section and General Requirements, Section 013100 - Project Management and Coordination. Owner will provide initial review and training of Owner-provided Owner's Project Management Program software at this time. As necessary, additional meetings will be scheduled between Owner and Design-Builder to assure both Parties have a complete understanding of the requirements, systems, and procedures. Design-Builder shall submit to Owner for review, through Owner's Project Management Program system, Design-Builder's proposed Schedule Maintenance Procedures ("SMP"). To the extent there are inconsistencies between the SMP and the Contract Documents, the Contract Documents shall govern. At the Project Controls Kick-off Meeting, Owner and Design-Builder shall review and verify methods and procedures related to the various Project schedules, including, but not limited to, the following:
 - 1. Review software limitations and content and format for reports.
 - 2. Verify availability of qualified personnel needed to develop and update the Project Schedule.
 - 3. Discuss coordination, including phasing, work stages, area separations, and interim Milestone Dates, including Substantial Completion.
 - 4. Review delivery dates for Owner-furnished products.
 - 5. Review the coordination required for work of Owner and its Separate Contractors.
 - 6. Review time required for review of submittals and resubmittals and its tracking into the Project Schedule.
 - 7. Review requirements for tests and inspections by independent testing and inspecting agencies.
 - 8. Review time required for completion and start-up procedures.

9. Review list of proposed construction Activities to be included in the Project Schedule.
10. Review submittal requirements and procedures.
11. Review Design-Builder's procedures, including its SMPs, for updating the Project Schedule.
12. Review procedures established by the Design-Builder for monitoring and updating the project schedules and for reporting progress. Coordinate procedures with the progress meeting and payment request date, including the procedures detailed in the Contract Documents.

1.6 COORDINATION

- A. Coordinate development, preparation, and processing of updates to the Project Schedule and reports with the performance of the Work and with scheduling and reporting of the Owner's and its Separate Contractors' work.
 1. Continually coordinate new Schedules Updates (following Owner review and approval of the Baseline Schedule) with Owner and Owner's Separate Contractors when additional contracts are executed during the entire duration of the Project.
- B. Coordinate the Project Schedule with the Design-Builder's Submission Schedule, progress reports, Schedule of Values, and other required schedules and reports.
 1. Coordinate all project Activities in the Project Schedule network with other activities and schedule them in proper sequence.

PART 2 - PRODUCTS

2.1 CRITICAL PATH METHOD SCHEDULE - GENERAL

- A. Milestone Dates: Such Milestone Dates are attached hereto as Contract, Exhibit D. Subject to General Conditions, Section 8.01 (M), nothing in the Milestone Dates, Baseline Schedule or Project Schedule shall preclude the Design-Builder, without cost or schedule impact to Owner, from advancing the Work of the Contract.
 1. Include Milestone Dates indicated in the Contract Documents in the Baseline Schedule, including, but not limited to, interim milestones (which must be identified as such in the schedule), the Milestone Dates, including the Substantial Completion date, and Contract close-out dates.
 2. The Milestone Dates, including the Substantial Completion date, can never be changed by submission of a schedule, including but not limited to, the Project Schedule and any of its updates that shows either an early or a late completion date, unless approved by the Owner through a Change Order.
 3. No time for weather will be apportioned for foreseeable occurrences in a specific regional area. The Design-Builder shall be responsible to determine reasonable averages and make allowances in the performance of the Work for the most extreme condition within such reasonable averages.
- B. Activity Codes, Project Codes, Enterprise Codes, and Work Breakdown Structure Code
 1. Following consultation with Owner, Design-Builder shall populate an agreed upon common set of coding fields and structures for the Activities in the Project Schedule (including the Owner's activity codes). Design-Builder may include additional codes and coding structures for its or others' internal reporting purposes.
 2. The schedule Activities shall be comprehensive to include all the work scope, interrelated network on a single project schedule that represents the entire Contract duration from Project Effective Date and shall include all Activities related to design phases, work packages, procurement processes, construction starts, start-up, and commissioning up to and including Substantial Completion and Contract closeout.

3. All Owner project and Activity codes are subject to revision as the Owner deems appropriate to properly manage the schedule and interface with other project controls programs and efforts. The GMP and Schedule of Values shall be aligned to the project work breakdown structure and Activity codes in the Project Schedules. Design-Builder will incorporate Owner-directed code edits and modifications into Project Schedule at no additional cost to Owner.
 4. Design-Builder must ensure that the agreed to Owner or common set of work breakdown structure and Activity codes are properly assigned to all Detailed Activities in the Project Schedule.
- C. Activities: Treat each Activity as a consumable resource for each principal element of the Work. Comply with the following:
1. Activity Duration: Define Activities for design, procurement, construction, start-up, and commissioning so no Activity is longer than ten (10) Business Days, unless specifically allowed by the Owner.
 2. Procurement Activities: Manufacturing, fabrication, and delivery Activities for long lead items and major items are exempt from the ten (10) Business Day duration limit, and may have a maximum of sixty (60) Business Days duration. Design-Builder's Project Schedule shall include Activities for procurement including all necessary steps for the quotation, purchase, fabrication, inspections, and delivery of commodities and fabricated materials, supplies, and equipment. The Activities for procurement and related logic shall include timely interfaces: (1) with the design schedule for the quotation, purchase, approval, and release(s) of purchased Materials and equipment; and (2) between the construction portion of the Project Schedule for area construction, bulk materials installation, as well as, construction completion of systems for construction inspection followed by turnover to the start-up testing organization, including significant module fabricator Activities. Long lead procurement items should be identified in the Project Schedule with the words 'long lead' in the Activity descriptions.
 3. Submittal Review Time: Include review and resubmittal times indicated in General Requirements, Section 013300 - Submittal Procedures in schedule. Coordinate submittal review times in the Project Schedule with dates entered in the Design-Builder's Submission Schedule.
 4. Commissioning Activities shall relate to the Commissioning Plan developed by the Commissioning Authority.
 5. Substantial Completion: Indicate completion on the date established for Substantial Completion, and allow time for the Owner's commissioning and administrative procedures necessary to execute the Notice of Substantial Completion.
 6. Incomplete Work items and Contract Closeout: Unless otherwise agreed to by Owner, include not more than one hundred twenty (120) Days for incomplete Work items and Contract Closeout Requirements.
- D. Constraints: Include constraints and work restrictions indicated in the Contract Documents, or approved by the Owner prior to use and show how date constraints affect the sequence of the Work. Unless otherwise approved by Owner, Design Builder shall not use constrained dates within the Schedule Software or Schedule network. Where Owner approved date constraints are used, the reason for the constraint shall be recorded on the Log feature of the Project Schedule.
1. Construction Areas: Identify each major area of construction for each major portion of the Work. Indicate where each construction Activity within a major area must be sequenced or integrated with other construction Activities.

- E. Project Schedule Preparation: Prepare a list of all Activities required to complete the Work of the Contract. At minimum, each individual specification section, including General Requirement sections, as indicated in the project documents, shall be listed as a work breakdown structure.
1. Activity(ies) ID: Subject to Owner's review and approval, Design-Builder shall utilize an activity coding structure for the Project Schedule and shall provide a unique identifier to each Activity. No Activity ID shall be deleted, recycled, or reused. Owner reserves the right to provide its own schedule coding structure for Owner's activities and to change and enhance Owner's schedule coding structure as Owner deems appropriate throughout the Project. Design-Builder will incorporate Owner changes and enhancements to the Owner activity coding structure in the Project Schedule at no additional cost to the Owner. Each detailed Activity shall be described in sufficient detail in order to completely identify the Work Activities to be performed and the location of such Work Activities. All hammers and Milestone Activities in the Project Schedule shall be clearly identified.
 2. Activities: Indicate the estimated start dates and completion dates, time duration, sequence requirements, and relationship of each Activity in relation to other Activities.
 3. Actual Activity Dates: Once an Activity has been assigned an actual date of occurrence, the status of that Activity and its corresponding Activity ID shall not be deleted, changed, or reassigned with a different Activity ID. Any change to actual dates must be accompanied with supporting data and is subject to Owner's approval. No actual start date shall occur ahead of the data date. When approved by Owner, detailed Activities that become obsolete as a result of changes in scope, work sequences, or other reasons shall be coded in order to indicate its status and the Log feature of the Project Schedule shall be updated with the date and reason for the change in status.
 4. Critical Path Activities: Identify critical path Activities, including those for interim Milestone Dates. Scheduled start and completion dates shall be consistent with the Milestone Dates identified in Exhibit D.
 5. Calendar: Assign all Project schedule Activities to a single project calendar.
 6. Partial day durations: Determine completion via remaining duration rather than percent complete to avoid partial days in the remaining durations and float values.
 7. Processing: Process data to produce output data status on a computer-drawn, PDM network. Revise data, reorganize Activity sequences, and reproduce as often as necessary to produce the Project Schedule within the limitations of the Contract duration and the Milestone Dates.
 8. Calculations: The Project Schedule network shall be calculated allowing Activities to retain their original logic. Progress override shall not be used when calculating the network status.
 9. Logic: Leads and lags will not be used in the creation of an Activity logic relationship, unless approved by Owner.
 - a. There shall be only two open ended Activities; (1) Effective Date, with no predecessor logic, and (2) Final Completion, with no successor logic. All intermediate Activity logic shall be connected.
 - b. Out of sequence Activities that have progressed before all preceding logic will be allowed only on a case by case basis, as approved by the Owner. The Design-Builder shall propose logic corrections to eliminate all out of sequence progress and correct out of sequence progress that continues for more than two update cycles by logic revisions, as approved by the Owner.
 10. Float: The Owner shall reject the Project Schedule and Project Schedule updates for the use of float suppression techniques such as preferential sequencing, special lead lags logic constraints, zero total or zero free float constraints, extended Activity times, or imposing constraint dates other than what is required by the Contract. Design-Builder shall be responsible for all related costs.

- a. The use of resource leveling used for the purpose of artificially adjusting Activity durations to consume float and influence the Critical Path is prohibited.
 - b. A Project Schedule or Project Schedule Update showing Work completing in less time than the Contract duration and accepted by the Owner will be considered to have float.
 - c. Any float generated during the performance of the Work, due to efficiencies of the Owner or any Design-Builder is a jointly owned, expiring Project resource available to both Owner and Design-Builder as set forth in the Float Time definition of this section.
 - d. Negative float will not be a basis for requesting time extensions and will not be construed as a means of acceleration or extension to the Milestone Dates.
- F. Format: Follow the applicable individual specification sections of the Work as the bases for the content of the Project Schedule. Organize the Project Schedule to provide the necessary detail for each area, level, quadrant and section as needed in the performance of the Work.
- G. Not Used.
- H. Recovery Plan. Should any phase of the Work fall behind to such extent that the Milestone Dates identified in Contract, Exhibit D may, as determined by Owner, be at risk, Design-Builder shall submit a plan to Owner within five (5) Days that details the Design-Builder's plan to recover to the Milestone Dates contained in the Contract Documents ("**Recovery Plan**") or, if such recovery is not possible, mitigate delay or avoid further delay to the Milestone Dates. Should Owner find that Design-Builder's proposed Recovery Plan is not sufficient to recover the Milestone Dates or, if such recovery is not possible or does not mitigate delay or avoid further delay to the Milestone Dates, Owner shall advise Design-Builder that Design-Builder has five (5) additional Days to submit an alternative recovery plan to recover the Milestones Dates or, if such recovery is not possible, mitigate delay or avoid further delay to the Milestone Dates.
- 1. Owner's Right to Direct Recovery. If Design-Builder has not corrected the schedule deficiency or does not have a reasonably acceptable Recovery Plan to correct the schedule deficiency within ten (10) Days of the submission of the original Recovery Plan, Owner shall have the right to require the Design-Builder to immediately: (1) increase the number of its employees performing the affected Work; (2) increase or change the amount of time or number of work shifts worked by the Design-Builder's employees, including increasing the number of hours worked per Day or the number of Days worked per week; and/or (3) increase or substitute other Design-Builder-provided resources, including hiring specialty Subcontractors, until the Work has recovered the Milestone Dates, or a plan for regaining the schedule reasonably acceptable to Owner is proposed by the Design-Builder or any combination thereof. Notwithstanding the foregoing, all other Contract terms relating to the Milestone Dates, including the calculation of liquidated damages remain unchanged.
 - 2. Costs for Recovery. All additional costs incurred by Design-Builder for providing acceleration in accordance with its Recovery Plan or as directed by the Owner under this Section shall be paid by Design-Builder.
- I. Owner's Remedies for Inadequate Schedule. If, after Notice by Owner, Design-Builder does not prepare or update the Project Schedule pursuant to the Contract Documents, Owner may use its own forces or another contractor to develop, maintain or manage the Project Schedule. Design-Builder's persistent failure to adequately prepare or update the Project Schedule may be deemed by Owner as an Event of Default by Design-Builder. Any costs incurred by Owner based upon Design-Builder's failures under the Contract Documents may, at Owner's discretion, be charged to Design-Builder. In such event, Design-Builder shall promptly provide the Owner and/or Owner's Separate Contractors with all information and data reasonably requested regarding the progress, requirements and other aspects of the Work, and shall otherwise cooperate with the Owner, at no cost to Owner, as reasonably necessary or desirable for the timely and efficient preparation, review, maintenance, and revision of the Project Schedule. Design-Builder shall be bound by such schedule as if it was prepared and maintained by Design-Builder pursuant to the Contract Documents.

- J. Computer Scheduling Software: Prepare the Project Schedule using current version of a program that has been developed specifically to manage CPM schedules and interface with the Owner's electronic databases.
 - 1. Utilize Oracle Primavera P6 or other operating system approved by the Owner to develop, update, and report on the Project Schedule.
 - 2. Owner may designate that certain sort and filtering criteria be established in the Scheduling Software and/or the electronic printed versions of same.
- K. Failure to include any work item required for the performance of the Work shall not excuse the Design-Builder from completing the Work of the Contract within applicable completion dates, regardless of the Owner's approval of the schedule.
- L. Where required by Owner, coordinate the work occurring concurrently through the integration of Owner and its Separate Contractors schedules into the Project Schedules.
- M. Changes in the Work: If requested by Owner, for each proposed change, and concurrent with its submission, prepare a time-impact analysis using a network fragnet to demonstrate the effect of the proposed change, if any, on the overall Project Schedule.
- N. Conduct educational workshops to train and inform the Design-Builder's Key Personnel, including Subcontractors' personnel, in proper methods of providing data and using CPM schedule information and techniques to update their portions of the Project Schedules.

2.2 PROJECT SCHEDULE DEVELOPMENT

- A. Executive Summary Schedule. Within fifteen (15) Business Days after the Effective Date, Design-Builder shall submit to Owner for review, a comprehensive bar chart schedule that identifies all major phases of design, procurement, construction, start-up, and commissioning for all work areas, structures, and work tasks associated with the entire scope of Design-Builder's Work. This schedule shall include any anticipated work not yet awarded to the Design-Builder and shall include all Milestone Dates identified in Exhibit D.
 - 1. Following submission of the Executive Summary Schedule by Design-Builder, the Owner will have fifteen (15) Business Days to review and comment on the proposed Executive Summary Schedule. Unless otherwise agreed by the Parties, on or before five (5) Business Days following Design-Builder's receipt of Owner's comments on the proposed Executive Summary Schedule, Owner and Design Builder will meet to discuss Owner's findings. No later than five (5) Business Days following Owner and Design-Builder's meeting, Design Builder shall incorporate all agreed upon changes, including changes required by the Contract Documents, and resubmit the proposed Executive Summary Schedule to Owner for consideration. The above process of resubmission, review, meeting, and incorporating corrections shall continue until Owner approves the Executive Summary Schedule at which time that Executive Summary Schedule will be designated as an approved Baseline Executive Summary Schedule (Level 1 Schedule).
- B. Interim Project Schedule: Within thirty (30) Days following the Effective Date or Owner's approval of the Executive Summary Schedule, whichever occurs first, the Design-Builder will submit to Owner for review an interim Project Schedule ("Interim Project Schedule") incorporating all Exhibit D Milestone Dates and addressing the first twelve (12) months in Level 3 detail of Work anticipated on the Project, including resource loading and all coded Activities through procurement and construction, with a projection of the remaining Project scope of Work in summary Level 2 detail, including start-up and commissioning phases. Design-Builder shall prepare the Interim Project Schedule using a time-scaled PDM network diagram representing all of the Work of the Contract.

1. The Interim Project Schedule submission should be complete enough to allow Owner to see Design-Builder's schedule progress related to the development of the intended basic level of detail, coding structures, and overall flow of the Work on the Project. This review is for information only and will not constitute Owner's final review or approval of the Project Schedule or the Schedule Maintenance Procedures.
 2. Once agreed upon by the Owner, the Interim Project Schedule shall establish the Interim Baseline Project Schedule for purposes of managing the Project and the initial reporting of progress. The Interim Project Schedule will be replaced by the completed Project Schedule once developed by the Design-Builder and approved by Owner.
 3. Failure to include any work item required for the performance of the Work shall not excuse the Design-Builder from completing the Work of the Contract within applicable completion dates, regardless of the Owner's approval of the schedule.
- C. Not Used.
- D. Interim Project Schedule Update Submissions. Within thirty (30) Days after the Interim Project Schedule submission and monthly thereafter until Owner approves the Project Schedule, Design-Builder shall submit Interim Project Schedule Updates which shall include the achieved progress and status as of the reporting period prior to its submission and conform to the requirements of the Contract Documents, including the General Requirements, for Owner's review and approval. The commissioning and start up phases shall begin with the construction turnover Activities. The Interim Project Schedule Updates shall be resource loaded, and loaded resources shall equal the crew sizes for Subcontractors.
- E. Initial Project Schedule. Within thirty (30) Days after Owner's acceptance of the 100% Schematic Design Documents, the Design Builder shall submit to the Owner for review and comment, a draft Level 3 Schedule that conforms to the requirements of the Contract Documents, including these General Requirements, and includes the achieved progress and status as of the reporting period prior to its submission and all Activities for all phases of the Project.
- F. Project Schedule. Within thirty (30) Days after Owner's acceptance of the 100% Design Development Documents, the Design-Builder shall submit to Owner for review and approval, a comprehensive detailed Level 3 schedule that conforms to the requirements of the Contract Documents, including these General Requirements. The Project Schedule shall include the achieved Project progress and status as of the reporting period prior to its submission and all Activities for all phases of design, procurement, construction, commissioning, and start-up for all work areas, structures, and work tasks associated with the entire scope of Design-Builder's Work; including any anticipated work not yet procured by the Design-Builder and including all Milestone Dates identified in Exhibit D.
1. Design-Builder's Integration of Owner's Work. During the development of the Project Schedule or later as deemed appropriate by the Owner, Design-Builder and Owner will mutually identify all items of work to be assigned and performed by the Owner, Owner's Technical Advisor, or Owner's Separate Contractors for integration into the Project Schedule. Owner reserves the right to develop and maintain a separate, but linked, Owner's Schedule (the "Owner Schedule") utilizing the Schedule Software which will contain portions of the Owner-performed or Owner-responsible work. Owner and Design-Builder will identify the proposed predecessor and successor logic ("Links") between the Project Schedule and Owner's Schedule. Once the Links have been established between the Project Schedule and the Owner Schedule, Design-Builder shall not modify or delete Links without Owner's written approval. Owner will inform Design-Builder of any changes Owner makes to the Links. The procedure for developing and maintaining of the Links between the Project Schedule and the Owner Schedule will be discussed in the Project Controls Kick-off meeting. Where required by Owner, Design-Builder shall coordinate the work occurring concurrently through the integration of Owner and its Separate Contractors schedules into the Project Schedule.

2. Project Schedule - Owner Review and Comment. Following submission by Design-Builder, the Owner will have fifteen (15) Business Days to review and comment on the Project Schedule. Unless otherwise agreed by the Parties, on or before five (5) Business Days following Design-Builder's receipt of Owner's comments on the proposed Project Schedule, Owner and Design-Builder will meet to discuss Owner's findings. No later than five (5) Business Days following Owner and Design-Builder's meeting, Design-Builder shall incorporate all agreed upon changes, including changes required by the Contract Documents, and resubmit the proposed Project Schedule to Owner for consideration. The above process of resubmission, review, meeting, and incorporating corrections shall continue until Owner approves the Project Schedule at which time that Project Schedule will be designated as an approved Baseline Schedule and shall be used as the Baseline Schedule for the Project.
 3. In the event Owner rejects the proposed Project Schedule, and while the draft Project Schedule is being revised and approved, Owner may elect to have Design-Builder start weekly updates on one of the rejected draft Project Schedules, as a parallel schedule file. Upon Owner's written approval of the Project Schedule, Design-Builder will transfer Owner-approved status information from the parallel updated schedule file to the approved Baseline Schedule to assist in expediting the development and reporting of the status updates.
 4. Upon Owner's written approval of the Project Schedule, Design-Builder will transfer Owner-approved status information from the parallel updated schedule file to the approved Baseline Schedule to assist in expediting the development and reporting of the status updates. The data from the Baseline Project Schedule will provide the basis for progress reporting and comparisons until such time a replacement baseline schedule has been approved. A replacement baseline ("re-baseline") of the schedule cannot occur without prior approval from Owner.
- G. Initial Project Schedule and Project Schedule Update Submissions. Within thirty (30) Days after the Initial Project Schedule submission or the Project Schedule submission, as the case may be, and monthly thereafter until Owner approves either the Initial Project Schedule or the Project Schedule, as the case may be, Design-Builder shall submit Project Schedule Updates which shall include the achieved progress and status as of the reporting period prior to its submission and conform to the requirements of the Contract Documents, including the General Requirements, for Owner's review and approval. The commissioning and start up phases shall begin with the construction turnover Activities. The Interim Project Schedule Updates and the Project Schedule Updates shall each be resource loaded, and loaded resources shall equal the crew sizes for Subcontractors.
- H. Detailed Coordination Schedules.
1. As deem necessary by Owner, desirable by Design-Builder, or otherwise called for by the Contract Documents, after the approval of the Project Schedule as a Baseline Schedule, Design-Builder will be allowed to supplement the Project Schedule with additional details and Activities in order to expand upon the definition and level of detail contained in the approved Project Schedule or to provide further work detail. These additional details shall be considered Detailed Coordination Schedules (Level 4), which compliment, but do not replace, the Project Schedules. Unless otherwise approved by Owner, Design-Builder shall present any proposed additional work Activities at least six (6) weeks prior to the commencement of the affected work.
 2. In addition, any 4-week rolling schedules outlining daily Activities prepared in conjunction with superintendents, foremen, field engineers, and Subcontractors shall be considered Detailed Coordination Schedules.
 3. All Detailed Coordination Schedules, including any 4-week look ahead schedules, shall be based upon and be directly related to the existing Project Schedule. When requested by the Owner, the added schedule details will either be incorporated into the Project Schedule by the use of the Schedule Software's "steps" function or added to the Project Schedule as new Activities, converting the affected Project Schedule Activities into reporting hammers. At the Owner's sole discretion, the Detailed Coordination Schedules may reside outside of the Project Plan if the Design-Builder provides clear references and mapping back to the corresponding parent or genesis Activities in the Project Schedule.

4. If requested, Owner will be afforded read and copy access rights to the Detailed Coordination Schedules, supporting data, resource data, and status details.
 5. The Detailed Coordination Schedules shall at all times be based upon the Project Schedule and any updates thereto. Design-Builder shall not use the Detailed Coordination Schedules to reschedule or reorganize the Activities in the Project Schedule. If contradictions do occur between the Project Schedule and any of the Detailed Coordination Schedules, the Project Schedule shall take precedence at all times.
- I. Commissioning Schedule. No later than six (6) months prior to the scheduled first system turnover, Design-Builder and Owner shall mutually develop the system start-up and commissioning detailed Activities in the existing Project Schedule (“Commissioning Schedule”), within the time frames previously established in the Project Schedule. This development of the Commissioning Schedule shall be based on systems and subsystems starting with construction turnovers in accordance with detailed procedures provided by the Design-Builder. Existing Level 2 resource and quantity loading will be revised to accommodate the addition of new and enhanced work Activity IDs.
 - J. Not Used.
 - K. Not Used.
 - L. Monthly Project Schedule Updating: Design-Builder shall facilitate ongoing planning and scheduling for the complete Project and accurately update and report schedule progress and forecasts. On the last Day of each month, the Design-Builder shall update the Project Schedule to reflect completed Work and changes to the planned Work. The Project Schedule shall be statused and compared to the currently-approved Baseline Schedule and the prior Schedule Update. Upon completing each Schedule Update, the Schedule Data file shall be saved so it can be compared to prior or future schedule updates. This process shall continue each month until the Project has achieved Substantial Completion. Design-Builder’s Schedule update intervals shall be monthly and shall capture work progress from the first Day to the last Day of the month. As appropriate, and coordinated with the Design-Builder’s schedule update, the Owner will update the Owner’s work in the Schedule.
 1. Design-Builder shall update the information contained in the Project Schedule weekly throughout the course of the Work.
 2. Design-Builder’s Monthly Schedule Updates will accurately reflect the Project’s progress in the Project Schedule, including updates to actual starts, actual finishes, forecasted remaining durations, physical percent completions, and any other status information required by the Contract Documents. The Project Schedule will be recalculated resulting in a revised current Project Schedule which will represent the Design-Builder’s current plan for executing the Work.
 3. All Activities must be statused by calculating actual progress as measured by work effort or by measurable and verifiable material quantities (“Physical Percent Complete”). When requested by Owner, Design-Builder will provide information and back up support to validate methods used to develop Physical Percent Complete. Physical Percent Complete shall not be based solely on remaining durations compared to original durations or actual cost expenditures compared to budgeted cost expenditures. Significant (greater than 5%) reductions in Physical Percent Complete shall be reported in Design-Builder’s Monthly Schedule Update along with an explanation for the reduction.
 4. Not Used.
 5. Design-Builder shall revise logic when Activities are reported as being out-of-sequence or as necessary to reflect Design-Builder’s current means, methods and sequences. Significant revisions to the logic and all that create a critical or near critical path or those that relieve a previously reported critical path shall be reported in Design-Builder’s Monthly Status Report along with an explanation for such revisions.

6. Design-Builder shall report all changes made to calendars or calendar designations used for respective detailed Activities in Design-Builder's Monthly Report along with an explanation for such changes.
7. Design-Builder shall report all changes to the Schedule Software date constraints contained in the Project Schedule in Design-Builder's Monthly Report along with an explanation for such changes.
8. If the Project Schedule is linked to other schedules not contained within the Project Schedule, whether controlled by the Design-Builder or by others, the following shall apply to each update: (1) all Design-Builder revisions to the predecessor or successor links shall be reported in Design-Builder's Monthly Report along with an explanation; and (2) all critical path delays created by the Links to the Owner's Schedule or dates as a result of the Links that the Design-Builder finds objectionable, shall be reported in Design-Builder's Monthly Report along with an explanation.
9. Any revisions to the schedule codes dictionaries or their application to individual detailed Activities shall be reported in Design-Builder's Monthly Report.
10. Status ("Data Date") will be as of the first Day of the following month.
11. The Design-Builder will release to Owner the resulting updated Schedule file on or before the fifth Day of the month. Design-Builder shall continuously gather and input status data into the Project Schedule throughout each work week to assure compliance with the release timing.
12. Owner's receipt and review of the updated Project Schedule shall not constitute Notice for purposes of any delays, nor shall it relieve Design-Builder of its obligation to provide Owner formal written Notice of all claims pursuant to the Contract Documents.

2.3 REPORTS

- A. Material Location Reports: In each Monthly Report, prepare and submit a comprehensive list of materials delivered to and stored either at Project site or at a facility or warehouse offsite. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items of equipment being fabricated or that are stored in a Subcontractor's warehouses or facilities.
- B. Field Condition Reports: Immediately on discovery of a difference between field conditions and the Contract Documents, prepare and submit a detailed report. Submit with a Request for Information. Include a detailed description of the differing conditions.

2.4 SPECIAL REPORTS

- A. General: Submit special reports directly to Owner within one Day of an occurrence. Distribute copies of report to parties affected by the occurrence.
- B. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, and response by Design-Builder's personnel, evaluation of results or effects, and similar pertinent information. Advise the Owner in advance when these events are known or predictable.

PART 3 - EXECUTION

3.1 PROJECT SCHEDULE

- A. Project Scheduler: Design-Builder shall engage a consultant or one of its own employees skilled in design-build design, procurement, construction, start-up, and commissioning planning and scheduling to provide planning, scheduling, evaluation, and reporting services using CPM scheduling.
1. Submit qualifications.
 2. Meetings: Design-Builder's Project scheduler shall attend all meetings related to the Project progress, alleged delays, and time impact and as otherwise required by Owner.
- B. Project Schedule and Project Schedule Reports Updating: Prior to each scheduled progress meeting, Design-Builder shall update the Project Schedule to reflect actual Project progress and Activities in accordance with the Contract Documents, including the General Requirements.
1. Revise the Project Schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue an updated Project Schedule concurrently with the reports of each such meeting. As a minimum, the Project Schedule update submissions shall occur monthly as identified in General Conditions, Section 013200 3.2 (C).
 2. Include reports required by the Contract Documents with updated Project Schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and Activity durations.
 3. As the Work progresses, indicate final remaining duration for each Activity.
- C. Distribution: Submit one electronic copy, in format specified, to the Owner and distribute copies of approved Project Schedule and reports required by the Contract Documents to the Owner, Owner's Separate Contractors, testing and inspecting agencies, and other parties identified by the Owner with a need-to-know schedule responsibility.
1. Post copies in Project meeting rooms and temporary field offices.
 2. When revisions are made, distribute updated Project Schedules and reports to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of Work Activities.

3.2 PROJECT STATUS REPORTING

- A. Daily Shift Report.
1. The Design-Builder shall keep accurate and detailed written records of Project progress during all stages of the Project. Starting with Site mobilization and lasting through completion of all Site Work, Design-Builder shall provide a daily report to Owner for any given shift of work ("**Shift Report**") in which the Design-Builder's or its Subcontractor's personnel were present on Site. Shift Reports shall cover both the Design-Builder's workforce, and any of Design-Builder's Subcontractors performing Work. Design-Builder may require all Subcontractors' performing Work on the Site to provide their own Daily Shift Report with these same minimum characteristics and requirements. The Subcontractors' Daily Reports shall be submitted each Day along with Design-Builder's Daily Shift Reports. The Subcontractors' daily report describing the construction Activities of the Day along with craft labor and equipment usage, including that of their subcontractors and safety incidents.
 2. The Shift Report will be provided to the Owner no later than sixteen (16) hours after the scheduled completion of the applicable shift.

3. The Shift Report shall detail all events which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, project progress and record weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities. The Shift Report shall also record all visitors, and include a detailed list of all material deliveries to the Site. The Shift Report shall be available to the Owner at all times and shall be turned over to the Owner upon Final Completion of the Project. An example of a Daily Shift Report and the minimum information required is included in Exhibit L (Form of Daily Shift Report). If Design-Builder has a standard daily report which includes the information requested in the sample Shift Report, Design-Builder may submit their standard daily report to Owner for consideration. If acceptable to Owner, then Design-Builder's form may be substituted.

B. Weekly Meeting Support Data.

1. Design-Builder is required to comply with the requirements set forth below and elsewhere in the Contract Documents in order to support a weekly meeting (“**Weekly Data**”) to discuss the progress of the Work with Owner. No later than noon on Tuesday, Design-Builder shall submit the Weekly Data via Owner's Project Management Program System. The Owner reserves the right to request additional or different information contained in the Weekly Data in order to capture the correct and relevant weekly status information required by Owner.
2. Beginning with the first full week after the Design-Builder's mobilization to the Site, Design-Builder shall be required to provide and update the Weekly Data by no later than 9:00 a.m. Wednesday for work performed through the prior Friday. Any needed revisions by Design-Builder to the Weekly Data shall be made by 12:00 p.m. on every Wednesday. The Design-Builder and Owner shall meet following the issuance of the Weekly Data to discuss its content and to plan additional actions that may be required. The date and time of the weekly meeting will be subject to changes as determined by the Owner.
3. The Weekly Data shall be a comprehensive report that covers all aspects of the Work on a weekly basis. The report template shall integrate data from the Project Schedule; quantity tracking and progress measurement systems; work hour tracking systems; health, safety, and environmental data; quality control; procurement; quantity installation; QA/QC Activities; start-up and commissioning; areas of concern; etc., risks and opportunities, covering each major discipline or category of work.. Additional Design-Builder files and information can be included in the Weekly Data as necessary and appropriate. All Weekly Data submissions must also be accompanied by: (1) a narrative summary of the Work started or completed; (2) problem areas and suggested recovery or mitigation plans; (3) unresolved Project issues; and (4) craft labor availability. Design-Builder shall supplement and support the Weekly Report with additional files and data as required by the Contract Documents or as requested by the Owner during the course of the Project.
4. In addition to standard data, submittals, and reports identified in this section, Design-Builder shall also address the following at each construction Site Weekly Meeting:
 - a. Two week and Four (4) week look ahead schedules;
 - b. Progress measurement, including Field Quantity Installation Reports and reports and upon reasonable request provide other supporting documentation for quantity tracking summary data;
 - c. Not Used;
 - d. Work progress photos;
 - e. Not Used.
 - f. Status update of prior week's open/closed Action Item list;

- g. Design, procurement, construction, start-up, and commissioning schedules and status;
- h. Schedule status, including schedule controls (current critical path and near critical path, schedule variances to prior week and approved baseline, impact analysis, and recovery plans);
- i. Planned, actual and forecasted dates for contract milestones, including the Milestone Dates;
- j. Installed material and commodities quantities report, Materials inventory control issues, and Material receiving reports;
- k. Critical action items;
- l. RFI's, proposed change orders, and issued change orders;
- m. Site safety and health and environmental status and corrective actions;
- n. QA/QC Activities and compliance and disposition reports;
- o. A report of any proposed deviations from plans or specifications contained in Permits issued pursuant to Environmental Laws;
- p. Staffing levels;
- q. Labor productivity trends;
- r. Subcontractor schedules;
- s. Construction/ engineering / procurement coordination lists;
- t. Construction progress photos;
- u. Progress curves and craft labor histograms depicting data for each phase/discipline/craft/subcontract/area;
- v. Procurement expediting report;
- w. Contingency usage and projections;
- x. Vendor surveillance reports;
- y. System Turnovers;
- z. System completion Punchlists; and
- aa. System completion exception lists.

C. Monthly Reporting.

- 1. Design-Builder shall submit to Owner a project monthly report (“**Monthly Report**”) in narrative format corresponding to the index included under Exhibit H. The final form of the template for the Monthly Report will be subject to Owner’s review and written approval. Design-Builder shall provide all charts, graphs, tables, reports, logs, or other data forms necessary to support the Monthly Report’s conclusions. The Monthly Report will recap the previous calendar month’s Work as well as provide

information on the upcoming work Activities for the next reporting period as well as critical Activities over the remainder of the Work.

2. The Monthly Report shall be a detailed examination of the status of the Work focused mainly on the identification of past, present, and possible forthcoming issues and resolutions.
 3. The Monthly Report closing will be through the last Day of each calendar month.
 4. The Monthly Report shall be due to the Owner on the fifth Day of each calendar month or at other times as agreed to by the Owner.
 5. A review of the Monthly Report will be performed by Owner with questions and/or comments returned to Design-Builder. Any action items or further requests are due by the date of the Monthly Project Review meeting. Design-Builder will review the Monthly Report with Owner at the Monthly Project Review meeting and be prepared to answer questions. The Monthly Project Review Meeting shall be conducted two (2) Business Days after Design-Builder's submission of the Monthly Report to Owner.
 6. Owner has the right to rely on all information provided by Design-Builder in its Monthly Report. Comments in Design-Builder's Monthly Report indicating changed Work or delays to the Work that Design-Builder believes are Owner's responsibility shall not constitute Notice by Design-Builder for such claims.
- D. Risk and Change Management Reporting. Design-Builder shall manage risks to and opportunities for the Project. Design-Builder shall utilize its own systems (as approved by Owner) to identify, document, and manage all risks and opportunities associated with the Project.
1. The goal of the risk management process is: early identification and assessment of risks and opportunities to the Project; understanding of the impact to the Project; determination of the consequences; identify ways to reduce/eliminate the risk, or benefit from the opportunity; and, to set a course of action. In order to accomplish this goal, Design-Builder shall identify events, decisions, unforeseen conditions, etc., that Design-Builder believes have the potential to impact the Project either favorably or negatively, including issues related to Subcontractors. This report does not constitute Notice.
 2. Design-Builder shall, on a monthly basis, identify and submit for Owner review, any identified or potential risks and opportunities. Identified items may relate to cost, scope, or schedule. Design-Builder shall include an assessment of the impact to cost, scope and schedule as well as the probability of occurrence for each item identified.
 3. Owner will review the submitted risks and opportunities with the Design-Builder on a bi-weekly basis.
 4. A report of submitted risks and opportunities records shall be submitted as part of the Design-Builder's Monthly Report.
- E. Other Reports and Information Required by Owner. Regardless of any information provided by Design-Builder in any report submitted to Owner, Design-Builder shall continue to be obligated by the Notice requirements in the Contract Documents by issuing a formal and separate Notice to Owner of all such claims within the time limitations described therein.

END OF SECTION 013200

SECTION 013300 - SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and Design-Builder's Submission Schedule, apply to this Section.

1.2 SUMMARY

- A. Section includes requirements for the submittal schedule and administrative and procedural requirements for submitting Shop Drawings, Product Data, Samples, and other submittals.
- B. Related Sections:
 - 1. Section 013200 – Construction Progress Documentation, for submitting schedules and reports, includes Design-Builder's Project Schedule.
 - 2. Section 017700 – Contract Closeout Requirements, for documents required to close out the Contract.
 - 3. Section 017823 – Operation and Maintenance Manuals, for submitting operation and maintenance manuals.

1.3 DEFINITIONS

- A. Action Submittals: Written and graphic information and physical samples that require the Owner's responsive action. Action submittals are those submittals indicated in individual specification sections as action submittals.
- B. Informational Submittals: Written and graphic information and physical samples that do not require the Owner's responsive action. Submittals may be rejected for not complying with requirements. Informational submittals are those submittals indicated in individual specification sections as informational submittals.
- C. Portable Document Format (PDF): An open standard file format licensed by Adobe Systems used for representing documents in a device-independent and display resolution-independent fixed-layout document format.
- D. Design-Builder's Submission Schedule: The itemized list of project submission requirements printed as a report from Project Management Program. The Design-Builder enters the date each item that needs to be submitted in order to meet the Milestone Dates in the Project Schedule and returns this document to the Owner.

1.4 ACTION SUBMITTALS

- A. Submittal Schedule: Design-Builder shall provide a Design-Builder's Submission Schedule in accordance with these General Requirements. The Design-Builder is to coordinate and cooperate with the Owner to arrange in chronological order by dates required by the Project Schedule or the Submittal Schedule identified in Contract, Exhibit R. Coordinate time required for review, ordering, manufacturing, fabrication, and delivery to establish dates. Coordinate additional time required for making corrections or modifications to submittals noted by the Owner's or its Technical Advisor and additional time for handling and reviewing submittals required by those corrections.
 - 1. Coordinate the Design-Builder's Submission Schedule with list of Subcontracts, the Schedule of Values, and coordinated Project Schedule.
 - 2. Initial Submittal: Submit in accordance with Project Schedule. Include submittals required during the first sixty (60) Days of the Project for each bid package. List those submittals required to maintain orderly progress of the Work and those required early because of long-lead time for manufacture or fabrication.

3. Final Submittal: Submit concurrently in accordance with the complete Project Schedule.

a.

B. Format for Submittals: Submit required submittals in electronic (PDF) file format.

1.5 SUBMITTAL ADMINISTRATIVE REQUIREMENTS

A. Coordination: Coordinate preparation and processing of submittals with the performance of the Work.

1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related Activities that require sequential activity.
2. Commissioning Authority will review submittals applicable to systems being commissioned for compliance with commissioning needs, concurrent with the Owner review and approval.
3. Submit all submittal items required for each Specification Section concurrently unless partial submittals for portions of the Work are indicated on approved Submission Schedule.
4. Submit action submittals and informational submittals required by the same Specification Section as separate packages under separate transmittals.
5. Coordinate transmittal of different types of submittals for related parts of the Work so processing will not be delayed because of need to review submittals concurrently for coordination.

a. Submit Operation and Maintenance Manuals concurrent with action submittal.

b. The Owner reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.

B. Processing Time: Allow time for submittal review, including time for re-submittals, as follows. Time for review shall commence on the Owner's receipt of submittal. Design-Builder shall not receive credit for the submission of any Submittal unless Owner or Owner's Technical Advisor deems the Submittal to be completed to the extent it is sufficient to allow Owner to determine that the Design-Builder will meet the requirements of the Contract Documents, including the general intent of the Basis of Design. No extension of the Milestone Dates will be authorized because of failure to transmit submittals enough in advance of the Work to permit processing, including re-submittals.

1. Initial Review: Allow fifteen (15) Days for initial review of each submittal. Allow additional time if coordination with subsequent submittals is required. The Owner's Technical Advisor will advise the Design-Builder when a submittal being processed must be delayed for coordination. In the event there is a submittal that impacts the critical path, Design-Builder may request the Owner to expedite the review.
2. Intermediate Review: If intermediate submittal is necessary, process it in same manner as initial submittal.
3. Re-submittal Review: Allow fifteen (15) Days for review of each re-submittal.
4. Sequential Review: Where sequential review of submittals by Owner or the Owner's Technical Advisor or other parties is indicated, allow twenty-one (21) Days for initial review of each submittal.
5. In the event that Design-Builder submits an extraordinary number of Submittals in a particular week as determined by Owner or Owner's Technical Advisor, and the volume of such Submittals will prevent the Owner and Owner's Technical Advisor from performing a review of all the Submittals within the time set forth herein, then the Owner shall notify the Design-Builder and the Parties will agree upon a priority list for review of the Submittals in question, including an agreed schedule (neither Party's agreement shall be unreasonably withheld or delayed) for those Submittals which may be returned after the time frames set forth in the Contract Documents in order for Design-Builder to maintain the Project's Critical Path. So long as Owner adheres to the agreed revised schedule for Submittal review, Design-Builder will not make a claim for Owner's delay to the Critical Path.

C. Identification and Information: Place a permanent label or title block on each paper copy submittal item for identification.

1. Indicate name of firm or entity that prepared each submittal on label or title block.
 2. Provide a space approximately 6 by 8 inches on label or beside title block to record Design-Builder's review and approval markings and action taken by the Design-Builder's Design Professional.
 3. Include the following information for processing and recording action taken:
 - a. Project name.
 - b. Date.
 - c. Name of Owner's Technical Advisor.
 - d. Name of Construction Manager (if applicable).
 - e. Name of Design-Builder.
 - f. Name of Subcontractor.
 - g. Name of supplier.
 - h. Name of manufacturer.
 - i. Submittal number including revision identifier.
 - 1) Submittal number shall be the submittal item number and Submittal Package number designated in the Design-Builder's Submission Schedule.
 - j. Drawing number and detail references, as appropriate.
 - k. Location(s) where product is to be installed, as appropriate.
 - l. Other necessary identification.
- D. Identification and Information: Identify and incorporate information in each electronic submittal file as follows:
1. Assemble complete submittal package into a single indexed file with links enabling navigation to each item.
 2. Name file with submittal number or other unique identifier, including revision identifier.
 3. Provide means for insertion to permanently record the Design-Builder's review and approval markings and action taken by the Design-Builder's Design Professional.
 4. Include the following information on an inserted cover sheet:
 - a. Project name.
 - b. Date.
 - c. Name and address of Owner's Technical Advisor (if applicable).
 - d. Name of Construction Manager (if applicable).
 - e. Name of Design-Builder.
 - f. Name of firm or entity that prepared submittal.
 - g. Name of Subcontractor.
 - h. Name of supplier.
 - i. Name of manufacturer.
 - j. Number and title of appropriate Specification Section.
 - k. Drawing number and detail references, as appropriate.
 - l. Location(s) where product is to be installed, as appropriate.
 - m. Related physical samples submitted directly.
 - n. Other necessary identification.
 5. Include the following information as keywords in the electronic file metadata:
 - a. Project name.
 - b. Number and title of appropriate Specification Section.
 - c. Manufacturer name.
 - d. Product name.
- E. Options: Identify options requiring selection by the Owner.

- F. Deviations: Identify deviations from the Contract Documents on submittals.
- G. Additional Copies: Unless the Owner or owner's Technical Advisor observes noncompliance with provisions in the Contract Documents, initial submittal may serve as final submittal.
- H. Transmittal: Assemble each submittal individually and appropriately for transmittal and handling. Transmit each submittal using a transmittal form. The Design-Builder's Design Professional will return submittals, without review, received from sources other than the Design-Builder.
1. Transmittal Form: Use the Design-Builder's office form.
 2. Transmittal Form: Provide locations on form for the following information:
 - a. Project name.
 - b. Date.
 - c. Destination (To:).
 - d. Source (From:).
 - e. Names of subcontractor, manufacturer, and supplier.
 - f. Category and type of submittal.
 - g. Submittal purpose and description.
 - h. Specification Section number and title.
 - i. Indication of full or partial submittal.
 - j. Drawing number and detail references, as appropriate.
 - k. Transmittal numbered consecutively.
 - l. Submittal and transmittal distribution record.
 - m. Remarks.
 - n. Signature of transmitter.
 3. On an attached separate sheet, prepared on the Design-Builder's letterhead, record relevant information, requests for data, revisions other than those requested by the Owner or Owner's Technical Advisor on previous submittals, and deviations from requirements in the Contract Documents, including minor variations and limitations. Include same identification information as related submittal.
- I. Re-submittals: Make re-submittals in same form and format.
1. Note date and content of previous submittal.
 2. Note date and content of revision in label or title block and clearly indicate extent of revision.
 3. Resubmit submittals until they are marked with approval notation from the Design-Builder's Design Professional's action stamp.
- J. Distribution: Furnish copies of final submittals to all applicable Subcontractors, Owner, Owner's Technical Advisor, Owner's Separate Contractors, authorities having jurisdiction, and others as necessary for performance of construction Activities. Show distribution on transmittal forms.
- K. Use for Construction: Use only final submittals that are marked with approval notation from the Owner's Technical Advisor's action stamp.

PART 2 - PRODUCTS

2.1 SUBMITTAL PROCEDURES

- A. General Submittal Procedure Requirements: Prepare and submit submittals required by individual Specification Sections. Types of submittals are indicated in individual Specification Sections.

1. Submit electronic submittals via email as electronic (PDF) files, to the Owner. If applicable, the Design-Builder will forward submittals to the Commissioning Authority for systems being commissioned. The Owner may request paper copies of certain submittals for onsite coordination.
 - a. The Owner will return annotated file. Annotate and retain one copy of file as an electronic Project turnover document file.
 - b. The Commissioning Authority through the Owner will return annotated file.
 2. Operation and Maintenance Manual Submittals: Submit concurrent with the Action Submittal, as related in individual Specification Sections.
 3. Closeout Submittals: Comply with requirements specified in Section 017700 – Contract Closeout Requirements and as listed in the Design-Builder’s Submission Schedule.
 4. Permits, Certificates and Certifications Submittals: Provide a statement that includes signature of entity responsible for preparing certification. Permits, Certificates and certifications shall be signed by an officer or other individual authorized to sign documents on behalf of that entity.
- B. Product Data: Collect information into a single submittal for each element of construction and type of product or equipment.
1. If information must be specially prepared for submittal because standard published data are not suitable for use, submit as Shop Drawings, not as Product Data.
 2. Mark each copy of each submittal to show which products and options are applicable.
 3. Include the following information, as applicable:
 - a. Submittal Package number and Submittal Item number.
 - b. Manufacturer's catalog cuts.
 - c. Manufacturer's product specifications.
 - d. Standard color charts.
 - e. Statement of compliance with specified referenced standards.
 - f. Testing by recognized testing agency.
 - g. Application of testing agency labels and seals.
 - h. Notation of coordination requirements.
 - i. Availability and delivery time information.
 4. For equipment, include the following in addition to the above, as applicable:
 - a. Wiring diagrams showing factory-installed wiring.
 - b. Printed performance curves.
 - c. Operational range diagrams.
 - d. Clearances required to other construction, if not indicated on accompanying Shop Drawings.
 5. Submit Product Data concurrent with Samples.
 6. Submit Product Data in electronic (PDF) file format.
- C. Shop Drawings: Prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Contract Documents or standard printed data.
1. Preparation: Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:
 - a. Submittal Package number and Submittal Item number.
 - b. Identification of products.
 - c. Schedules.
 - d. Compliance with specified standards.
 - e. Notation of coordination requirements.

- f. Notation of dimensions established by field measurement.
 - g. Relationship and attachment to adjoining construction clearly indicated.
 - h. Seal and signature of professional engineer if specified.
- 1) Sheet Size: Except for templates, patterns, and similar full-size drawings, submit Shop Drawings on sheets at least 8-1/2 by 11 inches but no larger than 30 by 42 inches.
- D. Samples: Submit Samples for review of kind, color, pattern, and texture for a check of these characteristics with other elements and for a comparison of these characteristics between submittal and actual component as delivered and installed.
1. Transmit Samples that contain multiple, related components such as accessories together in one submittal package.
 2. Identification: Attach label on unexposed side of Samples that includes the following:
 - a. Submittal Package number and Submittal Item number.
 - b. Generic description of Sample.
 - c. Product name and name of manufacturer.
 - d. Sample source.
 - e. Number and title of applicable Specification Section.
 3. Disposition: Maintain sets of approved Samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set.
 - a. Samples that may be incorporated into the Work are indicated in individual Specification Sections. Such Samples must be in an undamaged condition at time of use.
 - b. Samples not incorporated into the Work, or otherwise designated as the Owner's property, are the property of the Design-Builder.
 4. Samples for Initial Selection: Submit manufacturer's color charts consisting of units or sections of units showing the full range of colors, textures, and patterns available.
 - a. Number of Samples: For turnover purpose, submit six full sets of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. The Owner's Technical Advisor, through the Owner will return submittal with options selected.
 5. Samples for Verification: Submit full-size units or Samples of size indicated, prepared from same material to be used for the Work, cured and finished in manner specified, and physically identical with material or product proposed for use, and that show full range of color and texture variations expected. Samples include, but are not limited to, the following: partial sections of manufactured or fabricated components; small cuts or containers of materials; complete units of repetitively used materials; swatches showing color, texture, and pattern; color range sets; and components used for independent testing and inspection.
 - a. Number of Samples: Submit six sets of Samples. The Owner, will retain two Sample sets; remainder will be returned. Mark up and retain one returned Sample set as a turnover sample.
 - 1) Submit a single Sample where assembly details, workmanship, fabrication techniques, connections, operation, and other similar characteristics are to be demonstrated.
 - 2) If variation in color, pattern, texture, or other characteristic is inherent in material or product represented by a Sample, submit at least six sets of paired units that show approximate limits of variations.

- E. Subcontract List: Prepare a written summary identifying individuals or firms proposed for each portion of the Work, including those who are to furnish products or equipment fabricated to a special design. Include the following information in tabular form:
 - 1. Name, address, and telephone number of entity performing Subcontract Work or supplying products.
 - 2. Number and title of related Specification Section(s) covered by Subcontract.
 - 3. Drawing number and detail references, as appropriate, covered by Subcontract.
 - 4. Submit Subcontract list in PDF electronic file, to the Owner.
- F. Qualification Data: Prepare written information that demonstrates capabilities and experience of firm or person. Include lists of completed projects with project names and addresses, contact information of architects and owners, and other information specified.
- G. Welding Certificates: Prepare written certification that welding procedures and personnel comply with requirements in the Contract Documents. Submit record of Welding Procedure Specification and Procedure Qualification Record on American Welding Society (AWS) forms. Include names of firms and personnel certified.
- H. OSHA Certificates: Submit certificates of the OSHA 10-hour Construction Safety and Health Course – S1537-A, for all laborers, workers and mechanics working on site.
- I. Installer Certificates: Upon the Owner’s request, submit written statements on manufacturer's letterhead certifying that Installer complies with requirements in the Contract Documents and, where required, is authorized by manufacturer for this specific Project.
- J. Manufacturer Certificates: Upon the Owner’s request, submit written statements on manufacturer's letterhead certifying that manufacturer complies with requirements in the Contract Documents. Include evidence of manufacturing experience where required.
- K. Material Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting test results of material for compliance with requirements in the Contract Documents.
- L. Preconstruction Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting results of tests performed before installation of product, for compliance with performance requirements in the Contract Documents.
- M. Field Test Reports: Submit reports indicating and interpreting results of field tests performed either during installation of product or after product is installed in its final location, for compliance with requirements in the Contract Documents.

PART 3 - EXECUTION

3.1 DESIGN-BUILDER'S REVIEW

- A. Action and Informational Submittals: Review each submittal and check for coordination with other Work of the Contract and for compliance with the Contract Documents and the Basis of Design. Note corrections and field dimensions. Mark with approval stamp before submitting to the Owner.
- B. Approval Stamp: Stamp each submittal with a uniform, approval stamp. Include Project name and location, submittal number, Specification Section title and number, name of reviewer, date of the Design-Builder's approval, and statement certifying that submittal has been reviewed, checked, and approved for compliance with the Contract Documents and the Basis of Design.

3.2 OWNER'S ACTION ON SUBMITTAL

- A. General: The Owner will not receive and review any submittal from the Design-Builder without prior review and approval from the Design-Builder's designer of record, and that do not bear the designer of record's approval stamp.
- B. Action Submittals: The Owner or Owner's Technical Advisor will review submittals, for general compliance with the Basis of Design and design intent and provide acknowledgement or comments to the Design-Builder. Neither acknowledgement nor any comment from the Owner or Owner's Technical Advisor shall relieve the Design-Builder of its responsibility for compliance with the Basis and Design and the Contract Documents.
- C. Informational Submittals: The Owner or the Owner's Technical Advisor will review each submittal and will return it if it does not comply with requirements.
- D. Partial submittals prepared for a portion of the Work will be reviewed when use of partial submittals has received prior approval from the Owner or the Owner's Technical Advisor.
- E. Incomplete submittals are not acceptable, will be considered nonresponsive, and will be returned without review.
- F. Submittals not required by the Contract Documents may not be reviewed and may be discarded.
- G. The Commissioning Authority will receive copies of the submittals through the Design-Builder and will provide comments on the submittals via the Design-Builder.

3.3 DESIGN-BUILDER'S SUBMISSION SCHEDULE

- A. The Design-Builder's Submission Schedule: The Design-Builder's Submission Schedule shall provide the dates each item needs to be submitted to the Owner no later than thirty (30) Days after approval of the Interim Project Schedule. The Design-Builder's Submission Schedule shall include the date of all shop drawings, samples, materials that shall be submitted and the date approval is required. The Design-Builder shall adhere to the submittal processing times described in the Contract Documents, including Section 1.5 above when developing the Submission Schedule. The Design-Builder is to coordinate and cooperate with the Owner, Owner's Technical Advisor, and Owner's Separate Contractors to complete scheduling in accordance with the approved Project Schedule.

END OF SECTION 013300

SECTION 014000 - QUALITY AND CODE REQUIREMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and New York State (NYS) Statement of Special Inspections and Tests, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for quality assurance and quality control.
- B. Testing and inspecting services are required to verify compliance with requirements specified or indicated. These services do not relieve the Design-Builder of responsibility for compliance with the Contract Document requirements.
 - 1. Specific quality assurance and quality control requirements for individual construction Activities are specified in the Sections that specify those Activities. Requirements in those Sections may also cover production of standard products.
 - 2. Specified tests, inspections, and related actions do not limit the Design-Builder's other quality assurance and quality control procedures that facilitate compliance with the Contract Document requirements.
 - 3. Requirements for the Design-Builder to provide quality assurance and quality control services required by the Owner or authorities having jurisdiction are not limited by provisions of this Section.
- C. Related Sections:
 - 1. Section 012100 - Allowances, for testing and inspecting allowances.
 - 2. Section 013200 - Construction Progress Documentation, for developing a schedule of required tests and inspections.
 - 3. Individual Specification Sections, for specific inspections and tests requirements.

1.3 DEFINITIONS

- A. Quality Assurance Services: Activities, actions, and procedures performed during execution of the Work to guard against Defects and deficiencies and substantiate that proposed construction will comply with requirements.
- B. Quality Control Services: Tests, inspections, procedures, and related actions during and after execution of the Work to evaluate that actual products incorporated into the Work and completed construction comply with requirements.
- C. Product Testing: Tests and inspections that are performed by a testing agency qualified to conduct product testing and acceptable to authorities having jurisdiction, to establish product performance and compliance with specified requirements.
- D. Field Quality Control Testing: Tests and inspections that are performed on-site for installation of the Work and for completed Work.
- E. Testing Agency: An entity engaged to perform specific tests, inspections, or both. Testing laboratory shall mean the same as testing agency.
- F. Installer/Applicator/Erector: The Design-Builder or another entity engaged by the Design-Builder as an employee or Subcontractor, to perform a particular construction operation, including installation, erection, application, and similar operations.

- G. Experienced: When used with an entity or individual, "experienced" means having successfully completed a minimum of five previous projects similar in nature, size, and extent to this Project; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction.

1.4 ACTION SUBMITTALS

- A. Shop Drawings: For mockups, provide plans, sections, and elevations, indicating materials and size of mockup construction.
 - 1. Indicate manufacturer and model number of individual components.
 - 2. Provide axonometric drawings for conditions difficult to illustrate in two dimensions.

1.5 INFORMATIONAL SUBMITTALS

- A. Design-Builder's Quality Control Plan: For quality assurance and quality control Activities and responsibilities.
- B. Design-Builder's Quality Control Manager Qualifications: For supervisory personnel.
- C. Testing Agency Qualifications: For testing agencies specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include proof of qualifications in the form of a recent report on the inspection of the testing agency by a recognized authority.
- D. Schedule of Tests and Inspections: Prepare in tabular form and include the following:
 - 1. Specification Section number and title.
 - 2. Entity responsible for performing tests and inspections.
 - 3. Description of test and inspection.
 - 4. Identification of applicable standards.
 - 5. Identification of test and inspection methods.
 - 6. Number of tests and inspections required.
 - 7. Time schedule or time span for tests and inspections.
 - 8. Requirements for obtaining samples.
 - 9. Unique characteristics of each quality control service.

1.6 DESIGN-BUILDER'S QUALITY CONTROL PLAN

- A. Quality Control Plan, General: Submit in format acceptable to the Owner. Identify personnel, procedures, controls, instructions, tests, records, and forms to be used to carry out Design-Builder's quality assurance and quality control responsibilities. Coordinate with the Design-Builder's Project Schedule.
- B. Quality Control Personnel Qualifications: Engage qualified full-time personnel trained and experienced in managing and executing quality assurance and quality control procedures similar in nature and extent to those required for Project.
 - 1. Design-Builder's quality control manager for the Project may not serve as Design-Builder's Project Manager or Project superintendent without prior approval of the Owner. To the extent possible, Design-Builder's quality control personnel shall be free of the influences of production and schedule requirements and have authority to stop and/or reject Work. Design-Builder shall prohibit discrimination against employees who raise safety or quality concerns.
- C. Submittal Procedure: Describe procedures for ensuring compliance with requirements through review and management of submittal process. Indicate qualifications of personnel responsible for submittal review.
- D. Testing and Inspection: Include in quality control plan a comprehensive schedule of the Work requiring tests or inspections, including the following:

1. The Design-Builder-performed tests and inspections including subcontractor-performed tests and inspections. Include required tests and inspections and the Design-Builder-elected tests and inspections.
2. Special inspections required by authorities having jurisdiction and indicated on the "NYS or NYC Statement of Special Inspections and Tests."

E. Continuous Inspection of Workmanship: Describe process for continuous inspection during the Work to identify and correct deficiencies in workmanship in addition to testing and inspection specified. Indicate types of corrective actions to be required to bring the Work into compliance with standards of workmanship established by Contract Documents and approved mockups.

F. Monitoring and Documentation: Maintain testing and inspection reports including log of approved and rejected results. Include work the Owner has indicated as nonconforming or Defective. Indicate corrective actions taken to bring nonconforming work into compliance with requirements. Comply with requirements of authorities having jurisdiction.

1.7 REPORTS AND DOCUMENTS

A. Test and Inspection Reports: Prepare and submit certified written reports specified in other Sections. Include the following:

1. Date of issue.
2. Project title and number.
3. Name, address, and telephone number of testing agency.
4. Dates and locations of samples and tests or inspections.
5. Names of individuals making tests and inspections.
6. Description of the Work and test and inspection method.
7. Identification of product and Specification Section.
8. Complete test or inspection data.
9. Test and inspection results and an interpretation of test results.
10. Record of temperature and weather conditions at time of sample taking and testing and inspecting.
11. Comments or professional opinion on whether tested or inspected Work complies with the Contract Document requirements.
12. Name and signature of laboratory inspector.
13. Recommendations on retesting and re-inspecting.

B. Manufacturer's Technical Representative's Field Reports: Prepare written information documenting manufacturer's technical representative's tests and inspections specified in other Sections. Include the following:

1. Name, address, and telephone number of technical representative making report.
2. Statement on condition of substrates and their acceptability for installation of product.
3. Statement that products at Project site comply with requirements.
4. Summary of installation procedures being followed, whether they comply with requirements and, if not, what corrective action was taken.
5. Results of operational and other tests and a statement of whether observed performance complies with requirements.
6. Statement whether conditions, products, and installation will affect warranty.
7. Other required items indicated in individual Specification Sections.

C. Factory-Authorized Service Representative's Reports: Prepare written information documenting manufacturer's factory-authorized service representative's tests and inspections specified in other Sections. Include the following:

1. Name, address, and telephone number of factory-authorized service representative making report.
2. Statement that equipment complies with requirements.

3. Results of operational and other tests and a statement of whether observed performance complies with requirements.
4. Statement whether conditions, products, and installation will affect warranty.
5. Other required items indicated in individual Specification Sections.

1.8 PERMITS, LICENSES, AND CERTIFICATES:

- A. The Design-Builder shall obtain, maintain and pay for all applications, permits, filings, and licenses necessary for the execution of the Work and for the use of such Work when completed as required by any and all authorities having jurisdiction. The Design-Builder shall comply with and give notices required by Laws, ordinances, rules, regulations and lawful orders of authorities having jurisdiction bearing on performance of the Work.
- B. The Design-Builder shall promptly assist the Owner in securing all approvals from authorities having jurisdiction. Without limitation, the Design-Builder shall assist the Owner in making application for Project approval, variances or other approvals, Letters of Completion, Temporary Certificates of Occupancy, and Certificates of Occupancy, including completion of all necessary applications and supporting documentation.
- C. The Design-Builder shall comply with all regulations governing conduct, access to the premises, operation of equipment and systems and conduct while in or near the premises and shall perform the Work in such a manner as not to unreasonably interrupt or interfere with the conduct of business of the Client. For the purposes of this Project, the timeframe in which construction Activities may occur shall be from 7:00 a.m. until 5:00 p.m. unless otherwise approved in writing by the Owner.
- D. For the Owner's records, submit copies of permits, licenses, certifications, inspection reports, material certificates/affidavits, approvals, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, correspondence, records, and similar documents, established for compliance with standards and regulations bearing on performance of the Work.
- E. Dormitory Authority Permits: Prior to commencement of the Work, the Dormitory Authority shall provide the Design-Builder, at no cost, a Construction Permit for performance of the Work and post a copy at the Project site.
 1. The Design-Builder shall secure and pay for all other work permits, applications, filings, and approvals that are associated with the Work of the Contract and pay all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Contract as required by all other applicable authorities having jurisdiction.
 2. Design-Builder shall, at no additional costs to the Owner, provide for inspection of all electrical Work of the Contract and provide a certificate of compliance from an independent electrical inspection agency acceptable to the Owner.
- F. Municipal Permits: The Design-Builder shall secure required permits, applications, filings, and approvals that are associated with the Work of the Contract and pay all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Contract as required by applicable authorities having jurisdiction.
 1. The Design-Builder shall secure required work permits and approvals prior to commencement of the Work, provide a copy to the Owner and post a copy of the permit at the Project Site.
 2. The Design-Builder shall be responsible to maintain updated permits and approvals.
 3. Upon Substantial Completion of the Work of the Contract, the Design-Builder shall secure all required approvals from applicable authorities having jurisdiction, including DASNY. The Design-Builder shall provide a copy to the Owner. |

1.9 QUALITY ASSURANCE

- A. General: Qualifications paragraphs in this article establish the minimum qualification levels required; individual Specification Sections specify additional requirements.

- B. **Manufacturer Qualifications:** A firm experienced in manufacturing products or systems similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- C. **Fabricator Qualifications:** A firm experienced in producing products similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- D. **Installer Qualifications:** A firm or individual experienced in installing, erecting, or assembling work similar in material, design, and extent to that indicated for this Project, whose work has resulted in construction with a record of successful in-service performance.
- E. **Specialists:** Certain Specification Sections require that specific construction activities shall be performed by entities who are recognized experts in those operations. Specialists shall satisfy qualification requirements indicated and shall be engaged for the activities indicated.
- F. **Testing Agency Qualifications:** An independent agency with the experience and capability to conduct testing and inspecting indicated, as documented according to ASTM E 329, and with additional qualifications specified in individual Sections; and where required by authorities having jurisdiction, that is acceptable to authorities.
- G. **Manufacturer's Technical Representative Qualifications:** An authorized representative of manufacturer who is trained and approved by manufacturer to observe and inspect installation of manufacturer's products that are similar in material, design, and extent to those indicated for this Project.
- H. **Factory-Authorized Service Representative Qualifications:** An authorized representative of manufacturer who is trained and approved by manufacturer to inspect installation of manufacturer's products that are similar in material, design, and extent to those indicated for this Project.
- I. **Mockups:** Before installing portions of the Work requiring mockups, build mockups for each form of construction and finish required to comply with the following requirements, using materials indicated for the completed Work:
 - 1. Build mockups in location and of size indicated or, if not indicated, as directed by the Owner.
 - 2. Notify the Owner seven Days in advance of dates and times when mockups will be constructed.
 - 3. Employ supervisory personnel who will oversee mockup construction. Employ workers that will be employed during the construction at the Project.
 - 4. Demonstrate the proposed range of aesthetic effects and workmanship.
 - 5. Obtain the Owner's approval of mockups before starting work, fabrication, or construction.
 - a. Allow seven Days for initial review and each re-review of each mockup.
 - 6. Maintain mockups during construction in an undisturbed condition as a standard for judging the completed Work.
 - 7. Demolish and remove mockups when directed by the Owner.
- J. **Project-Specific Mockups:** Full size physical assemblies that are constructed on-Site. Mockups are constructed to verify selections made under sample submittals; to demonstrate aesthetic effects and, where indicated, qualities of materials and execution; to review coordination, testing, or operation; to show interface between dissimilar materials; and to demonstrate compliance with specified installation tolerances. Mockups are not Samples. Approved mockups establish the standard by which the Work will be judged. Construct mock-ups for Owner approval. Mockups shall be reviewed for compliance with the Contract and code requirements and, once approved, set the standard of quality to be followed in subsequent construction. Mockups may be constructed as part of the project construction with prior approval of the Owner. Required mockups shall be:
 - 1. A typical section of exterior wall construction, including but not limited to, a window, lintel, sill, veneer anchorage, vapor barrier, air barrier, insulation, drywall, framing, flashing, and sealant.

2. Other mock-ups shall be determined during the design phase of the project and prior to establishment of the GMP.

1.10 QUALITY CONTROL

- A. Owner Responsibilities: Following Owner's approval, where quality control services are indicated as the Owner's responsibility, the Owner will engage a qualified testing agency to perform these services.
 1. The Owner will furnish the Design-Builder with names, addresses, and telephone numbers of testing agencies engaged and a description of types of testing and inspecting they are engaged to perform.
- B. Design-Builder Responsibilities: Tests and inspections not explicitly assigned to the Owner are the Design-Builder's responsibility. Perform additional quality control activities required to verify that the Work complies with requirements, whether specified or not.
 1. Unless otherwise indicated, provide quality control services specified and those required by authorities having jurisdiction. Perform quality control services required of the Design-Builder by authorities having jurisdiction, whether specified or not.
 2. Where services are indicated as the Design-Builder's responsibility, engage a qualified testing agency to perform these quality control services.
 - a. Design-Builder shall not employ same entity engaged by the Owner, unless agreed to in writing by the Owner.
 3. Notify testing agencies and Owner at least 24 hours in advance of time (excluding weekends and holidays) when Work that requires testing or inspecting will be performed.
 4. Where quality control services are indicated as the Design-Builder's responsibility, submit a written report, in duplicate, of each quality control service.
 5. Testing and inspecting requested by the Design-Builder and not required by the Contract Documents are the Design-Builder's responsibility.
 6. Submit additional copies of each written report directly to authorities having jurisdiction, when they so direct.
- C. Manufacturer's Field Services: Where indicated, engage a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. Report results in writing as specified in Section 013300 - Submittal Procedures.
- D. Manufacturer's Technical Services: Where indicated, engage a manufacturer's technical representative to observe and inspect the Work. Manufacturer's technical representative's services include participation in pre-installation conferences, examination of substrates and conditions, verification of materials, observation of Installer activities, inspection of completed portions of the Work, and submittal of written reports.
- E. Retesting/Re-inspecting:
 1. Regardless of whether original tests or inspections were the Design-Builder's responsibility, provide quality control services, including retesting and re-inspecting, for construction of replaced Work that failed to comply with the Contract Documents.
 2. Costs for retesting and re-inspecting construction that replaces or is necessitated by work that failed to comply with the Contract Documents, or costs attributable to the Design-Builder's lack of coordination in properly scheduling the Work requiring testing and inspection will be the responsibility of the Design-Builder.
- F. Testing Agency Responsibilities: Cooperate with the Owner and Design-Builder in performance of duties. Provide qualified personnel to perform required tests and inspections.

1. Notify the Owner and Design-Builder promptly of irregularities or deficiencies observed in the Work during performance of its services.
2. Determine the location from which test samples will be taken and in which in-situ tests are conducted.
3. Conduct and interpret tests and inspections and state in each report whether tested and inspected work complies with or deviates from requirements.
4. Submit a written report, in duplicate, of each test, inspection, and similar quality control service through Design-Builder.
5. Does not release, revoke, alter, or increase the Contract Document requirements or approve or accept any portion of the Work.
6. Do not perform any duties of the Design-Builder.

G. Associated Services: The Design-Builder shall cooperate with agencies performing required tests, inspections, and similar quality control services, and provide reasonable auxiliary services as requested. Notify agency sufficiently in advance of operations to permit assignment of personnel. The Design-Builder shall provide the following:

1. Access to the Work, including equipment required to access the Work.
2. Incidental labor and facilities necessary to facilitate tests and inspections.
3. Adequate quantities of representative samples of materials that require testing and inspecting. Assist agency in obtaining samples.
4. Facilities for storage and field curing of test samples.
5. Delivery of samples to testing agencies.
6. Preliminary design mix proposed for use for material mixes that require control by testing agency.
7. Security and protection for samples and for testing and inspecting equipment at Project site.

H. Coordination: Coordinate sequence of activities to accommodate required quality assurance and quality control services with a minimum of delay and to avoid necessity of removing and replacing construction to accommodate testing and inspecting.

1. Schedule times for tests, inspections, obtaining samples, and similar activities.

I. Schedule of Tests and Inspections: Prepare a schedule of tests, inspections, and similar quality control services required by the Contract Documents. Coordinate and submit concurrently with Design-Builder's Project Schedule. Update as the Work progresses.

1. Distribution: Distribute schedule to the Owner, testing agencies, and each party involved in performance of portions of the Work where tests and inspections are required.

1.11 NYS SPECIAL INSPECTIONS AND TESTS

A. Special Inspections and Tests: The Owner will engage a qualified testing agency to conduct special inspections and tests required by authorities having jurisdiction as the responsibility of the Owner, as indicated in the NYS Statement of Special Inspections and Tests, attached to this Section, and as follows:

1. Notifying Design-Builder promptly of irregularities and deficiencies observed in the Work during performance of its services.
2. Submitting a written report of each test, inspection, and similar quality control service to the Owner with copy to the Design-Builder and to authorities having jurisdiction. Frequency of reporting shall be determined in consultation with the Owner.
3. Submitting a final report of special tests and inspections at Substantial Completion, this includes a list of unresolved deficiencies.
4. Interpreting tests and inspections and stating in each report whether tested and inspected work complies with or deviates from the Contract Documents or code requirements.
5. Retesting and re-inspecting corrected work.

- B. Testing and inspecting services are required to verify compliance with requirements specified or indicated. These services do not relieve a Design-Builder of responsibility for compliance with the Contract Document requirements.
 - 1. Specified tests, inspections, and related actions do not limit Design-Builder's quality control procedures that facilitate compliance with the Contract Document requirements.
 - 2. Inspections and tests performed by the testing agency shall in no way relieve the Design-Builder of the responsibility to construct in accordance with the Contract Documents.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 TEST AND INSPECTION LOG

- A. Prepare a record of tests and inspections. Include the following:
 - 1. Date test or inspection was conducted.
 - 2. Description of the Work tested or inspected.
 - 3. Date test or inspection results were transmitted to the Design-Builder's Design Professional.
 - 4. Identification of testing agency or special inspector conducting test or inspection.
- B. Maintain log at Project Site. Post changes and modifications as they occur. Provide access to test and inspection log for the Owner's reference during normal working hours.

3.2 REPAIR AND PROTECTION

- A. General: On completion of testing, inspecting, sample taking, and similar services, repair damaged construction and restore substrates and finishes.
- B. Protect construction exposed by or for quality control service activities.
- C. Repair and protection are the Design-Builder's responsibility, regardless of the assignment of responsibility for quality control services.

END OF SECTION 014000

SECTION 015000 - TEMPORARY FACILITIES AND CONTROLS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes requirements for temporary utilities, support facilities, and security and protection facilities.
- B. Related Sections:
 - 1. Section 011200 – Contract Summary of Work, for work restrictions and limitations on utility interruptions.

1.3 USE CHARGES

- A. General: Installation, removal, and use charges for temporary facilities and utilities, including the cost of consumption and charges related to sewer service, water service, electric power service, water and sewer service from existing system, electric power service from existing system, internet services, and telephone service shall be included in the GMP. Allow other entities to use temporary services and facilities without cost, including, but not limited to, the Owner, occupants of the Project, testing agencies, and authorities having jurisdiction.

1.4 INFORMATIONAL SUBMITTALS

- A. Site Plan: Show temporary facilities, utility hookups, staging areas, and parking areas for construction personnel.
- B. Erosion and Sedimentation Control Plan: Show compliance with requirements of New York State Department of Environmental Conservation Stormwater General Permit or authorities having jurisdiction, whichever is more stringent.
- C. Moisture-Protection Plan: Describe procedures and controls for protecting materials and construction from water absorption and damage; including delivery, handling, and storage provisions for materials subject to water absorption or water damage, discarding water-damaged materials, protocols for mitigating water intrusion into completed Work, and replacing water damaged Work.
 - 1. Indicate sequencing of work that requires water, such as sprayed fire-resistive materials, plastering, and terrazzo grinding, and describe plans for dealing with water from these operations. Show procedures for verifying that wet construction has dried sufficiently to permit installation of finish materials.
- D. Dust-Control and HVAC-Control Plan: Submit coordination drawing and narrative that indicates the dust-control and HVAC-control measures proposed for use, proposed locations, and proposed time frame for their operation. Identify further options if proposed measures are later determined to be inadequate. Include the following:
 - 1. Locations of dust-control partitions at each phase of the work.
 - 2. HVAC system isolation schematic drawing.
 - 3. Location of proposed air filtration system discharge.
 - 4. Other dust-control measures.
 - 5. Waste management plan.

1.5 QUALITY ASSURANCE

- A. Electric Service: Comply with NECA, NEMA, and UL standards and regulations and requirements of authority having jurisdiction for temporary electric service. Install service to comply with NFPA 70.
- B. Tests and Inspections: Arrange for authorities having jurisdiction to test and inspect each temporary utility before use. Obtain required certifications and permits.
- C. Accessible Temporary Egress: Comply with applicable provisions in ADA-ABA Accessibility Guidelines and ANSI A117.1.

1.6 PROJECT CONDITIONS

- A. Temporary Use of Permanent Facilities: Engage installer of each permanent service to assume responsibility for operation, maintenance, and protection of each permanent service during its use as a construction facility before the Owner's acceptance, regardless of previously assigned responsibilities.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Chain-Link Fencing: Minimum 0.148-inch thick, galvanized steel, chain-link fabric fencing; minimum 8 feet high with galvanized steel pipe posts; minimum 2-3/8-inch OD line posts and 2-7/8-inch OD corner and pull posts[, with 1-5/8-inch OD top rails].
- B. Portable Chain-Link Fencing: Minimum 0.148-inch thick, galvanized steel, chain-link fabric fencing; minimum 8 feet high with galvanized steel pipe posts; minimum 2-3/8-inch OD line posts and 2-7/8-inch OD corner and pull posts, with 1-5/8-inch OD top and bottom rails. Provide galvanized steel bases for supporting posts.
- C. Wood Enclosure Fence: Plywood, 8 feet high, framed with four 2-by-4-inch rails, with preservative-treated wood posts spaced not more than 8 feet apart.
- D. Polyethylene Sheet: Reinforced, fire-resistive sheet, 10 mils minimum thickness, with flame-spread rating of 15 or less per ASTM E 84.
 - (ii) Dust Control Adhesive-Surface Walk-off Mats: Provide mats minimum 36 by 60 inches.
- E. Insulation: Un-faced mineral-fiber blanket, manufactured from glass, slag wool, or rock wool; with maximum flame-spread and smoke-developed indexes of 25 and 50, respectively.

2.2 TEMPORARY FACILITIES

- A. Field Offices, General: Prefabricated or mobile units with serviceable finishes, temperature controls, and foundations adequate for normal loading.
- B. Owner's-Use Field Office: Of sufficient size to accommodate needs of the Owner and Owner's construction personnel office activities and to accommodate project meetings. Keep office clean and orderly. Furnish and equip offices as follows:
 - 1. Furniture required for the Project-site documents including file cabinets, plan tables, plan racks, and bookcases.
 - 2. Conference room of sufficient size to accommodate meetings of 20 individuals. Provide electrical power service and 120-V ac duplex receptacles, with not less than 1 receptacle on each wall. Furnish room with conference table, chairs, and 4-foot square tack and marker boards.
 - 3. Drinking water and private toilet.

4. Heating and cooling equipment necessary to maintain a uniform indoor temperature of 68 to 72 deg F.
 5. Lighting fixtures capable of maintaining average illumination of 20 fc at desk height.
- C. Storage and Fabrication Sheds: Provide sheds sized, furnished, and equipped to accommodate materials and equipment for construction operations.
1. Store combustible materials apart from building. |

2.3 EQUIPMENT

- A. Fire Extinguishers: Portable, UL rated; with class and extinguishing agent as required by locations and classes of fire exposures.
- B. HVAC Equipment: Unless the Owner authorizes use of permanent HVAC system, provide vented, self-contained, liquid-propane-gas or fuel-oil heaters with individual space thermostatic control.
1. Use of gasoline-burning space heaters, open-flame heaters, or salamander-type heating units is prohibited.
 2. Heating Units: Listed and labeled for type of fuel being consumed, by a testing agency acceptable to authorities having jurisdiction, and marked for intended use.
 3. Permanent HVAC System: If the Owner authorizes use of permanent HVAC system for temporary use during construction, provide filter with MERV of 8 at each return air grille in system and remove at end of construction. |

PART 3 - EXECUTION

3.1 INSTALLATION, GENERAL

- A. Locate facilities where they will serve the Project adequately and result in minimum interference with performance of the Work. Relocate and modify facilities as required by progress of the Work.
- B. Provide each facility ready for use when needed to avoid delay. Do not remove until facilities are no longer needed or are replaced by authorized use of completed permanent facilities.

3.2 TEMPORARY UTILITY INSTALLATION

- A. General: Install temporary service or connect to existing service.
1. Arrange with utility company, the Owner, and existing users for time when service can be interrupted, if necessary, to make connections for temporary services.
- B. Sewers and Drainage: Provide temporary utilities to remove effluent lawfully.
1. Connect temporary sewers to municipal system as directed by authorities having jurisdiction. Obtain all required permits.
- C. Water Service: Install water service and distribution piping in sizes and pressures adequate for construction. Obtain all required permits.
- D. Water Service: Connect to the existing water service facilities. Clean and maintain water service facilities in a condition acceptable to the Owner. At Substantial Completion, restore these facilities to condition existing before initial use.

- E. Sanitary Facilities: Provide temporary toilets, wash facilities, and drinking water for use of construction personnel. Comply with requirements of authorities having jurisdiction for type, number, location, operation, and maintenance of fixtures and facilities.
1. Toilets: Use of the Owner's existing toilet facilities will not be permitted. At Substantial Completion, restore these facilities to condition existing before initial use.
- F. Heating and Cooling: Provide temporary heating and cooling required by construction activities for curing or drying of completed installations or for protecting installed construction from adverse effects of high and low temperatures or high humidity. Select equipment that will not have a harmful effect on completed installations or elements being installed.
- G. Isolation of Work Areas in Occupied Facilities: Prevent dust, fumes, and odors from entering occupied areas.
1. Prior to commencing work, isolate the HVAC system in area where work is to be performed in accordance with approved coordination drawings.
 - a. *Disconnect supply and return ductwork in work area from HVAC systems servicing occupied areas.*
 - b. *Maintain negative air pressure within work area using HEPA-equipped air filtration units, starting with commencement of temporary partition construction, and continuing until removal of temporary partitions is complete.*
 2. Maintain dust partitions during the Work. Use vacuum collection attachments on dust-producing equipment. Isolate limited work within occupied areas using portable dust containment devices.
 3. Perform daily construction cleanup and final cleanup using approved, HEPA-filter-equipped vacuum equipment.
- H. Ventilation and Humidity Control: Provide temporary ventilation required by construction activities for curing or drying of completed installations or for protecting installed construction from adverse effects of high humidity. Select equipment that will not have a harmful effect on completed installations or elements being installed. Coordinate ventilation requirements to produce ambient condition required and minimize energy consumption.
1. Provide dehumidification systems to maintain the facilities with RH levels appropriate for the type of construction being performed or in accordance with the manufacturer's recommendations to reduce substrate moisture levels to level required to allow installation or application of finishes.
- I. Electric Power Service: Connect to the existing electric power service. Maintain equipment in a condition acceptable to the Owner. Obtain all required permits.
- J. Electric Power Service: Provide electric power service and distribution system of sufficient size, number of phases, capacity, and power characteristics required for construction operations and testing of all installed equipment.
1. Install electric power service overhead, unless otherwise indicated. Design-Builder may be required to install electric power underground at Owner's discretion.
 2. Connect temporary service to the existing power source, as directed by the Owner.
- K. Lighting: Provide temporary lighting with local switching that provides adequate illumination for construction operations, observations, inspections, and traffic conditions.
1. Install and operate temporary lighting that fulfills security and protection requirements without operating entire system.
 2. Install lighting for the Project identification sign.

- L. Telephone Service: Provide temporary telephone and internet service in Owner's-use facilities for use by all construction personnel. Install five telephone lines for each field office.
 - 1. Provide additional telephone lines for the following:
 - a. Provide a dedicated telephone line for each facsimile machine in each field office.
 - 2. Not Used.
 - 3. Not Used.

3.3 SUPPORT FACILITIES INSTALLATION

- A. General: Comply with the following:
 - 1. Provide construction for temporary offices, shops, and sheds located within construction area or within 30 feet of building lines that is noncombustible according to ASTM E 136. Comply with NFPA 241.
 - 2. Maintain support facilities until Substantial Completion inspection date is scheduled. Remove before Substantial Completion. Personnel remaining after Substantial Completion will be permitted to use permanent facilities, under conditions acceptable to the Owner.
- B. Temporary Use of Permanent Roads and Paved Areas: Locate temporary roads and paved areas in same location as permanent roads and paved areas. Construct and maintain temporary roads and paved areas adequate for construction operations. Extend temporary roads and paved areas, within construction limits indicated, as necessary for construction operations.
 - 1. Coordinate elevations of temporary roads and paved areas with permanent roads and paved areas.
 - 2. Prepare subgrade and install subbase and base for temporary roads and paved areas specified in Individual Technical Specification sections.
 - 3. Delay installation of final course of permanent hot-mix asphalt pavement until immediately before Substantial Completion. Repair hot-mix asphalt base-course pavement before installation of final course.
- C. Traffic Controls: Comply with requirements of authorities having jurisdiction.
 - 1. Protect existing site improvements to remain including curbs, pavement, and utilities.
 - 2. Maintain access for fire-fighting equipment and access to fire hydrants.
- D. Parking: Provide temporary parking areas for construction personnel.
- E. Dewatering Facilities and Drains: Comply with requirements of authorities having jurisdiction. Maintain the Project site, excavations, and construction free of water.
 - 1. Dispose of rainwater in a lawful manner that will not result in flooding the Project or adjoining properties nor endanger permanent Work or temporary facilities.
 - 2. Remove snow and ice as required to minimize accumulations.
- F. Project Signs: Provide Project signs as indicated. Unauthorized signs are not permitted.
 - 1. Identification Signs: Provide Project identification signs as specified in the Contract Documents or as approved by Owner.
 - 2. Temporary Signs: Provide other signs as required to inform public and individuals seeking entrance to the Project.
 - a. Provide temporary, directional signs for construction personnel and visitors.

- 3. Maintain and touchup signs so they are legible at all times.
- G. Waste Disposal Facilities: Provide waste-collection containers in sizes adequate to handle waste from construction operations. Comply with requirements of authorities having jurisdiction.
- H. Lifts and Hoists: Provide facilities necessary for hoisting materials and personnel.
 - 1. Truck cranes and similar devices used for hoisting materials are considered "tools and equipment" and not temporary facilities.
- I. Not Used.
- J. New Elevator Use: Use of the new elevators may be permitted on a limited basis, provided elevators are cleaned and maintained in a condition acceptable to the Owner. At Substantial Completion, restore elevators to condition existing before initial use, including replacing worn cables, guide shoes, and similar items of limited life.
 - 1. Do not load elevators beyond their rated weight capacity.
 - 2. Provide protective coverings, barriers, devices, signs, or other procedures to protect elevator car and entrance doors and frame. If, despite such protection, elevators become damaged, engage elevator Installer to restore damaged work so no evidence remains of correction work. Return items that cannot be refinished in field to the shop, make required repairs and refinish entire unit, or provide new units as required.
- K. Temporary Stairs: Until permanent stairs are available, provide temporary stairs where ladders are not adequate.
 - 1. Provide protective coverings, barriers, devices, signs, or other procedures to protect stairs and to maintain means of egress. If stairs become damaged, restore damaged areas so no evidence remains of correction work.
- L. Not Used.
- M. Temporary Use of Permanent Stairs: Use of new stairs for construction traffic will be permitted, provided stairs are protected and finishes restored to new condition at time of Substantial Completion. |

3.4 SECURITY AND PROTECTION FACILITIES INSTALLATION

- A. Environmental Protection: Provide protection, operate temporary facilities, and conduct construction as required to comply with environmental regulations and that minimize possible air, waterway, and subsoil contamination or pollution or other undesirable effects.
- B. Temporary Erosion and Sedimentation Control: Provide measures to prevent soil erosion and discharge of soil-bearing water runoff and airborne dust to undisturbed areas and to adjacent properties and walkways, according to authorities having jurisdiction.
 - 1. Verify that flows of water redirected from construction areas or generated by construction activity do not enter or cross tree- or plant- protection zones.
 - 2. Inspect, repair, and maintain erosion and sedimentation control measures during construction until permanent vegetation has been established.
 - 3. Clean, repair, and restore adjoining properties and roads affected by erosion and sedimentation from the Project Site during the course of the Project.
 - 4. Remove erosion and sedimentation controls and restore and stabilize areas disturbed during removal.

- C. Stormwater Control: Comply with requirements of authorities having jurisdiction. Provide barriers in and around excavations and subgrade construction to prevent flooding by runoff of stormwater from heavy rains.
- D. Tree and Plant Protection: Install temporary fencing outside the drip line of trees to protect vegetation from damage from construction operations. Protect tree root systems from damage, flooding, and erosion.
- E. Site Enclosure Fence: Before construction operations begin furnish and install site enclosure fence in a manner that will prevent people and animals from easily entering site except by entrance gates.
 - 1. Extent of Fence: As required to enclose entire Project site or portion determined sufficient to accommodate construction operations.
 - 2. Maintain security by limiting number of keys and restricting distribution to authorized personnel. Furnish one set of keys to the Owner.
- F. Security Enclosure and Lockup: Install temporary enclosure around partially completed areas of construction. Provide lockable entrances to prevent unauthorized entrance, vandalism, theft, and similar violations of security. Lock entrances at end of each Day.
- G. Barricades, Warning Signs, and Lights: Comply with requirements of authorities having jurisdiction for erecting structurally adequate barricades, including warning signs and lighting.
- H. Temporary Egress: Maintain temporary egress from existing occupied facilities as indicated and as required by authorities having jurisdiction.
- I. Covered Walkway: Erect protective, covered walkway for passage of individuals through or adjacent to Project site. Coordinate with entrance gates, other facilities, and obstructions. Comply with regulations of authorities having jurisdiction.
 - 1. Construct covered walkways using scaffold or shoring framing.
 - 2. Provide overhead decking, protective enclosure walls, handrails, barricades, warning signs, exit signs, lights, safe and well-drained walkways, and similar provisions for protection and safe passage.
 - 3. Paint and maintain appearance of walkway for duration of the Work.
- J. Temporary Enclosures: Provide temporary enclosures for protection of construction, in progress and completed, from exposure, foul weather, other construction operations, and similar activities. Provide temporary weathertight enclosure for building exterior.
 - 1. Where heating or cooling is needed and permanent enclosure is not complete, insulate temporary enclosures.
- K. Temporary Partitions: Provide floor-to-ceiling dustproof partitions to limit dust and dirt migration and to separate areas occupied by the Owner from fumes and noise.
 - 1. Construct dustproof partitions with fire rated gypsum wallboard with joints taped on occupied side, and fire-retardant plywood on construction operations side.
 - 2. Where fire-resistance-rated temporary partitions are required by authorities having jurisdiction, construct partitions according to the rated assemblies.
 - 3. Insulate partitions to control noise transmission to occupied areas.
 - 4. Seal joints and perimeter. Equip partitions with gasketed dustproof doors and security locks where openings are required.
 - 5. Protect air-handling equipment.
 - 6. Provide walk-off mats at each entrance through temporary partition.
- L. Fire Safety during Construction: Comply with all requirements identified herein as well as the more stringent requirements of the applicable codes (New York State Building and Fire Codes).

1. No smoking: Smoking shall be prohibited throughout the project/construction site. "No Smoking" signs shall be conspicuously posted at all entrances and throughout the site.
2. The Design-Builder shall designate a Fire Prevention Program Superintendent/ Fire Safety Manager who shall be responsible for all fire safety efforts until completion and acceptance of the Work described in the Contract Documents that include but are not limited to the following:
 - a. Pre-fire Plans. Develop in cooperation with the local Fire Chief and Fire Code Official. Any changes affecting the utilization of information contained in the plan shall result in notification to the local Fire Chief and Fire Code Official.
 - b. Training. Job Site personnel shall be trained in fire safety practices and procedures and the proper use of fire protection equipment, including hand-held fire extinguishers, hose lines, fire alarm and sprinkler systems.
 - c. Fire Protection Devices. Fire protection and detection equipment shall be maintained and serviced.
 - d. Hot Work Operations. Welding, cutting, open torches, torch-applied roof system activities, and other hot work operations shall be conducted under a permit system. A fire watch and fire extinguishers shall be provided.
 - e. Impairment of Fire Protection Systems. Coordinate planned, emergency or accidental impairments of fire protection systems to include tagging of impaired systems and notification of Fire Department, Alarm Company, Building Owner/Operator, and Design-Builders.
 - f. Temporary Covering of Fire Protection Devices. Coverings placed on or over fire protection devices for protection from damage shall be immediately removed upon the completion of the Work in the room or area in which the devices are installed.
3. Provide readily accessible telephone service for fire calls at a location or locations approved by the Owner.
 - a. The Design-Builder shall pay all costs thereof until completion and acceptance of the Work or as otherwise directed by the Owner.
 - b. Provide/post the street address of the construction site and the emergency telephone number of the Fire Department adjacent to the telephone.
4. Provide or maintain a Temporary or Permanent Standpipe system for Fire Department use in accordance with the following:
 - a. Buildings subject to the New York State Building Code: In buildings that require a standpipe system, such standpipe shall be installed when the progress of construction reaches a height of 40 feet.
 - b. Buildings subject to the New York City Building Code: In buildings that require a standpipe system, such standpipe shall be installed when the progress of construction reaches a height of 75 feet. The standpipe shall be equipped with an air pressurized alarm system.
 - c. Buildings being demolished: An existing standpipe system shall be maintained in operation on all floors, starting one floor directly below the floor being demolished. The existing standpipe can be converted to a dry standpipe if freezing conditions exist.

3.5 MOISTURE AND MOLD CONTROL

- A. Design-Builder's Moisture-Protection Plan: Avoid trapping water in finished work. Document visible signs of mold that may appear during construction.
- B. Exposed Construction Phase: Before installation of weather barriers, when materials are subject to wetting and exposure and to airborne mold spores, protect as follows:
 1. Protect porous materials from water damage.
 2. Protect stored and installed material from flowing or standing water.
 3. Keep porous and organic materials from coming into prolonged contact with concrete.

4. Remove standing water from decks.
 5. Keep deck openings covered or dammed.
- C. Partially Enclosed Construction Phase: After installation of weather barriers but before full enclosure and conditioning of building, when installed materials are still subject to infiltration of moisture and ambient mold spores, protect as follows:
1. Do not load or install drywall or other porous materials or components, or items with high organic content, into partially enclosed building.
 2. Keep interior spaces reasonably clean and protected from water damage.
 3. Periodically collect and remove waste containing cellulose or other organic matter.
 4. Discard or replace water-damaged material.
 5. Do not install material that is wet.
 6. Discard, replace or clean stored or installed material that begins to grow mold.
 7. Perform work in a sequence that allows any wet materials adequate time to dry before enclosing the material in drywall or other interior finishes.
- D. Controlled Construction Phase of Construction: After completing and sealing of the building enclosure but prior to the full operation of permanent HVAC systems, maintain as follows:
1. Control moisture and humidity inside building by maintaining effective dry-in conditions.
 2. Use permanent HVAC system to control humidity.
 3. Comply with manufacturer's written instructions for temperature, relative humidity, and exposure to water limits.
 - a. Hygroscopic materials that may support mold growth, including wood and gypsum-based products, that become wet during the course of construction and remain wet for 48 hours are considered Defective.
 - b. Measure moisture content of materials that have been exposed to moisture during construction operations or after installation. Record daily readings over a forty-eight hour period. Identify materials containing moisture levels higher than allowed. Report findings in writing to the Design Professional.
 - c. Remove materials that cannot be completely restored to their manufactured moisture level within 48 hours.

3.6 OPERATION, TERMINATION, AND REMOVAL

- A. Supervision: Enforce strict discipline in use of temporary facilities. To minimize waste and abuse, limit availability of temporary facilities to essential and intended uses.
- B. Maintenance: Maintain facilities in good operating condition until removal.
1. Maintain operation of temporary enclosures, heating, cooling, humidity control, ventilation, and similar facilities on a 24-hour basis where required to achieve indicated results and to avoid possibility of damage.
- C. Temporary Facility Changeover: Do not change over from using temporary security and protection facilities to permanent facilities until Substantial Completion.
- D. Termination and Removal: Remove each temporary facility when need for its service has ended, when it has been replaced by authorized use of a permanent facility, or no later than Substantial Completion. Complete or, if necessary, restore permanent construction that may have been delayed because of interference with temporary facility. Repair damaged Work, clean exposed surfaces, and replace construction that cannot be satisfactorily repaired.

1. Materials and facilities that constitute temporary facilities are property of the Design-Builder. The Owner reserves right to take possession of the Project identification signs.
2. Remove temporary roads and paved areas not intended for or acceptable for integration into permanent construction. Where area is intended for landscape development, remove soil and aggregate fill that do not comply with requirements for fill or subsoil. Remove materials contaminated with road oil, asphalt and other petrochemical compounds, and other substances that might impair growth of plant materials or lawns. Repair or replace street paving, curbs, and sidewalks at temporary entrances, as required by authorities having jurisdiction.
3. At Substantial Completion, repair, renovate, and clean permanent facilities used during construction period. Comply with final cleaning requirements specified in Section 017700 – Contract Closeout Requirements.

END OF SECTION 015000]

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SECTION 016000 - PRODUCT REQUIREMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and Design-Builder's Submission Schedule, apply to this section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for selection of products for use in the Project; product delivery, storage, and handling; manufacturers' standard warranties on products; special warranties; and comparable products.
- B. Related Sections:
 - 1. Section 012100 – Allowances, for products selected under an allowance.
 - 2. Section 012300 – Alternates, for products selected under an alternate.
 - 3. Section 013300 – Submittal Procedure, for product submittals.

1.3 DEFINITIONS

- A. Products: Items obtained for incorporating into the Work of the Contract and purchased new for the Project. The term "product" includes the terms "material," "equipment," and "system."
 - 1. Named Products: Items identified by manufacturer's product name, including make or model number or other designation shown or listed in manufacturer's published product literature that is current as of date of the Contract Documents.
 - 2. New Products: Items that have not previously been incorporated into another project or facility. Products salvaged or recycled from other projects are not considered new products.
 - 3. Comparable Product: Product that is demonstrated and approved through submittal process to have the indicated qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics that equal or exceed those of specified product.
- B. Procurement Exemption Approval Product Specification: A specification in which a specific manufacturer's product is named including make or model number or other designation, to establish the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes as a single source or sole source provider.

1.4 ACTION SUBMITTALS

- A. Comparable Product Requests: Submit request for consideration of each comparable product. Identify product or fabrication or installation method to be replaced. Include Specification Section number and title and Drawing numbers and titles.
 - 1. Include data to indicate compliance with the requirements specified in "Comparable Products" Article.
 - 2. Owner's Action: If necessary, the Owner will request additional information or documentation for evaluation within one week of receipt of a comparable product request. The Owner will notify the Design-Builder through the Owner of approval or rejection of proposed comparable product request within fifteen (15) Days of receipt of request, or seven (7) Days of receipt of additional information or documentation, whichever is later.
 - a. Form of Approval: As specified in Section 013300 - Submittal Procedure.

- b. Use product specified if the Owner does not issue a decision on use of a comparable product request within time allocated.
- B. Procurement Exemption Approval Product Specification Submittal: Comply with requirements in Section 013300 - Submittal Procedure. Show compliance with requirements.

1.5 QUALITY ASSURANCE

- A. Compatibility of Options: If the Design-Builder is given option of selecting between two or more products for use on the Project, select product compatible with products previously selected, even if previously selected products were also options.
 - 1. Design-Builder is responsible for providing products and construction methods compatible with products and construction methods of its Subcontractors.
 - 2. If a dispute arises between contractors over concurrently selectable but incompatible products, the Owner will determine which products shall be used.

1.6 PRODUCT DELIVERY, STORAGE, AND HANDLING

- A. Deliver, store, and handle products using Means and Methods that will prevent damage, deterioration, and loss, including theft and vandalism. Comply with manufacturer's written instructions.
- B. Delivery and Handling:
 - 1. Schedule delivery to minimize long-term storage at the Project site and to prevent overcrowding of construction spaces.
 - 2. Coordinate delivery with installation time to ensure minimum holding time for items that are flammable, hazardous, easily damaged, or sensitive to deterioration, theft, and other losses.
 - 3. Deliver products to the Project site in an undamaged condition in manufacturer's original sealed container or other packaging system, complete with labels and instructions for handling, storing, unpacking, protecting, and installing.
 - 4. Inspect products on delivery to determine compliance with the Contract Documents and to determine that products are undamaged and properly protected.
- C. Storage:
 - 1. Store products to allow for inspection and measurement of quantity or counting of units.
 - 2. Store materials in a manner that will not endanger the Project structure.
 - 3. Store products that are subject to damage by the elements under cover in a weather tight enclosure above ground, with ventilation adequate to prevent condensation.
 - 4. Store foam plastic protected from exposure to sunlight, except to extent necessary for period of installation and concealment.
 - 5. Comply with product manufacturer's written instructions for temperature, humidity, ventilation, and weather-protection requirements for storage.
 - 6. Protect stored products from damage and liquids from freezing.

1.7 PRODUCT WARRANTIES

- A. Warranties specified in other Sections shall be in addition to, and run concurrent with, other warranties required by the Contract Documents. Manufacturer's disclaimers and limitations on product warranties do not relieve the Design-Builder of obligations under requirements of the Contract Documents.
 - 1. Manufacturer's Warranty: Written warranty furnished by individual manufacturer for a particular product and specifically endorsed by manufacturer to the Owner.

2. Special Warranty: Written warranty required by the Contract Documents to provide specific rights for the Owner.
- B. Special Warranties: Prepare a written document that contains appropriate terms and identification, ready for execution.
1. Manufacturer's Standard Form: Modified to include Project-specific information and properly executed.
 2. Refer to individual specification sections for specific content requirements and particular requirements for submitting special warranties.
- C. Submittal Time: Comply with requirements in Section 013300 – Submittal Procedure.

PART 2 - PRODUCTS

2.1 PRODUCT SELECTION PROCEDURES

- A. General Product Requirements: Provide products that comply with the Contract Documents, are undamaged and new at time of installation.
1. Provide products complete with accessories, trim, finish, fasteners, and other items needed for a complete installation and indicated use and effect.
 2. Standard Products: If available, and unless custom products or nonstandard options are specified, provide standard products of types that have been produced and used successfully in similar situations on other projects.
 3. The Owner reserves the right to limit selection to products with warranties not in conflict with requirements of the Contract Documents.
 4. Where products are accompanied by the term "as selected," the Owner will make selection.
 5. Descriptive, performance, and reference standard requirements in the Specifications establish characteristics of products.
 6. Or Equal: For products specified by name and accompanied by the term "or equal," or "or approved equal," or "or approved," comply with requirements in "Comparable Products" Article to obtain approval for use of an unnamed product.
 7. Provide products that do not contain Asbestos.
- B. Product Selection Procedures:
1. Product: Where Specifications include a procurement exemption approval and name a single source, sole source, manufacturer and product, provide the named product that complies with requirements. Comparable products or substitutions for the Design-Builder's convenience will not be considered.
 2. Manufacturer/Source: Where Specifications include a procurement exemption approval and name a single manufacturer or source, provide a product by the named manufacturer or source that complies with requirements. Comparable products or substitutions for the Design-Builder's convenience will not be considered.
 3. Products: Where Specifications include a list of names of both available manufacturers and products, provide one of the products listed, or an unnamed product, that complies with requirements. Comply with requirements in "Comparable Products" Article for consideration of an unnamed product.
 4. Manufacturers: Where Specifications include a list of available manufacturers, provide a product by one of the manufacturers listed, or a product by an unnamed manufacturer, that complies with requirements. Comply with requirements in "Comparable Products" Article for consideration of an unnamed manufacturer's product.

- C. Visual Matching Specification: Where Specifications require "match sample", provide a product that complies with requirements and matches sample. The Owner's decision will be final on whether a proposed product matches.
 - 1. If no product available within specified category matches and complies with other specified requirements, comply with requirements in "Comparable Products" Article for consideration of an unnamed manufacturer's product.
- D. Visual Selection Specification: Where Specifications include the phrase "as selected from manufacturer's full range", select a product that complies with requirements. The Owner will select color, gloss, pattern, density, or texture from manufacturer's product line that includes both standard and premium items.

2.2 COMPARABLE PRODUCTS

- A. Conditions for Consideration: The Owner will consider the Design-Builder's request for comparable product when the following conditions are satisfied. If the following conditions are not satisfied, the Owner may return requests without action, except to record noncompliance with these requirements:
 - 1. Action Submittal shall be provided in accordance with Submittal Procedures within sixty (60) Days after Notice to Proceed.
 - 2. Evidence that the proposed product does not require revisions to the Contract Documents that it is consistent with the Contract Documents and will produce the indicated results, and that it is compatible with other portions of the Work.
 - 3. Detailed comparison of qualities of proposed product with those named in the Specifications, including attributes such as performance, weight, size, durability, visual effect, and specific features and requirements indicated.
 - 4. Evidence that proposed product provides specified warranty.
 - 5. List of similar installations for completed projects with project names and addresses and names and addresses of design professionals and owners, if requested.
 - 6. Samples, if requested.
- B. Not Used.

PART 3 - EXECUTION (Not Used)

END OF SECTION 016000

SECTION 017329 - CUTTING AND PATCHING

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section includes procedural requirements for cutting and patching.
- B. Responsibility: The Design-Builder and its Subcontractors are responsible for the cutting and patching to permit installation or performance of the Work.
- C. Related Sections include the following:
 - 1. Individual Specification Sections.

1.3 DEFINITIONS

- A. Cutting: Removal of in-place construction necessary to permit installation or performance of Work of the contract.
- B. Patching: Fitting and repair work required to restore surfaces to original conditions after installation of Work.

1.4 SUBMITTALS

- A. Cutting and Patching Proposal: Submit a proposal describing procedures at least ten (10) Days before the time cutting and patching will be performed, requesting approval to proceed. Include the following information:
 - 1. Extent: At each occurrence, describe cutting and patching, show how they will be performed, and indicate why they cannot be avoided.
 - 2. Changes to In-Place Construction: Describe anticipated results. Include changes to structural elements and operating components as well as changes in building's appearance and other significant visual elements.
 - 3. Products: List products to be used and firms or entities that will perform the Work.
 - 4. Dates: Indicate when cutting and patching will be performed.
 - 5. Utility Services and Mechanical/Electrical Systems: List services/systems that cutting and patching procedures will disturb or affect. List services/systems that will be relocated and those that will be temporarily out of service. Indicate how long services/systems will be disrupted.
 - 6. Structural Elements: Where cutting and patching involve adding reinforcement to structural elements, submit details and engineering calculations showing integration of reinforcement with original structure.
 - 7. Owner's Technical Advisor's Approval: Obtain approval of cutting and patching proposal before cutting and patching. Approval does not waive right to later require removal and replacement of unsatisfactory work.

1.5 QUALITY ASSURANCE

- A. Structural Elements: Do not cut and patch structural elements in a manner that could change their load-carrying capacity or load-deflection ratio.

- B. Operational Elements: Do not cut and patch operating elements and related components in a manner that results in reducing their capacity to perform as intended or that result in increased maintenance or decreased operational life or safety.
- C. Fire Rated Elements: Do not cut and patch fire rated elements (i.e., floors, walls, roofs, shafts, etc.) in a manner that results in reducing their capacity to perform as intended or that results in decreased fire rating.
- D. Miscellaneous Elements: Do not cut and patch miscellaneous elements or related components in a manner that could change their load-carrying capacity, which results in reducing their capacity to perform as intended, or that result in increased maintenance or decreased operational life or safety.
- E. Visual Requirements: Do not cut and patch construction in a manner that results in visual evidence of cutting and patching. Do not cut and patch construction exposed on the exterior or in occupied spaces in a manner that would, in Owner's opinion, reduce the building's aesthetic qualities. Remove and replace construction that has been cut and patched in a visually unsatisfactory manner.
- F. Cutting and Patching Conference: Before proceeding, meet at Project Site with parties involved in cutting and patching, including other trades. Review areas of potential interference and conflict. Coordinate procedures and resolve potential conflicts before proceeding.

1.6 WARRANTY

- A. Existing Warranties: Remove, replace, patch, and repair materials and surfaces cut or damaged during cutting and patching operations, by methods and with materials so as not to void existing warranties.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. General: Comply with requirements specified in other Sections.
- B. In-Place Materials: Use materials identical to in-place materials. For exposed surfaces, use materials that visually match in-place adjacent surfaces to the fullest extent possible.
 - 1. If identical materials are unavailable or cannot be used, use materials that, when installed, will match the visual and functional performance of in-place materials, unless specified otherwise in other Sections.
- C. Fire Rated Elements: Provide fire-stopping products/systems specified in system design listings by approved testing agencies that conform to the construction type, penetrating item, annular space requirements and fire rating involved in each separate assembly. Refer to applicable individual Specification Sections.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine surfaces to be cut and patched and conditions under which cutting and patching are to be performed.
 - 1. Compatibility: Before patching, verify compatibility with and suitability of substrates, including compatibility with in-place finishes or primers.
 - 2. Proceed with installation only after unsafe or unsatisfactory conditions have been corrected.

3.2 PREPARATION

- A. Temporary Support: Provide temporary support of Work to be cut.
- B. Protection: Protect in-place construction during cutting and patching to prevent damage. Provide protection from adverse weather conditions for portions of Project that might be exposed during cutting and patching operations.
- C. Adjoining Areas: Avoid interference with use of adjoining areas or interruption of free passage to adjoining areas.
- D. Existing Utility Services and Mechanical/Electrical Systems: Where existing services/systems are required to be removed, relocated, or abandoned, bypass such services/systems before cutting or patching to minimize interruption to occupied areas.

3.3 PERFORMANCE

- A. General: Employ skilled workers to perform cutting and patching. Proceed with cutting and patching at the earliest feasible time, and complete without delay.
 - 1. Cut in-place construction to provide for installation of other components or performance of other construction, and subsequently patch as required to restore surfaces to their original condition.
- B. Cutting: Cut in-place construction by sawing, drilling, breaking, chipping, grinding, and similar operations, including excavation, using methods least likely to damage elements retained or adjoining construction.
 - 1. In general, use hand or small power tools designed for sawing and grinding, not hammering and chopping. Cut holes and slots as small as possible, neatly to size required, and with minimum disturbance of adjacent surfaces. Temporarily cover openings when not in use.
 - 2. Finished Surfaces: Cut or drill from the exposed or finished side into concealed surfaces.
 - 3. Concrete or Masonry: Cut using a cutting machine, such as an abrasive saw or a diamond-core drill.
 - 4. Mechanical and Electrical Services: Cut off pipe or conduit in walls or partitions to be removed. Cap, valve, or plug and seal remaining portion of pipe or conduit to prevent entrance of moisture or other foreign matter after cutting.
 - 5. Proceed with patching after construction operations requiring cutting are complete.
- C. Patching: Patch construction by filling, repairing, refinishing, closing up, and similar operations following performance of other Work. Patch with durable seams that are as invisible as possible. Provide materials and comply with installation requirements specified in other Sections.
 - 1. Inspection: Where feasible, test and inspect patched areas after completion to demonstrate integrity of installation.
 - 2. Exposed Finishes: Restore exposed finishes of patched areas and extend finish restoration into retained adjoining construction in a manner that will eliminate evidence of patching and refinishing.
 - a. Clean piping, conduit, and similar features before applying paint or other finishing materials.
 - b. Restore damaged pipe covering to its original condition.
 - 3. Floors and Walls: Where walls or partitions that are removed extend one finished area into another, patch and repair floor and wall surfaces in the new space. Provide an even surface of uniform finish, color, texture, and appearance. Remove in-place floor and wall coverings and replace with new materials, if necessary, to achieve uniform color and appearance.
 - a. Where patching occurs in a painted surface, apply primer and intermediate paint coats over the patch and apply final paint coat over entire unbroken surface containing the patch. Provide additional coats until patch blends with adjacent surfaces.

4. Ceilings: Patch, repair, or rehang in-place ceilings as necessary to provide an even-plane surface of uniform appearance.
 5. Exterior Building Enclosure: Patch components in a manner that restores enclosure to a weathertight condition.
 6. Fire Rated Elements: Install fire-stopping systems to comply with applicable individual Specification Sections and fire-stopping manufacturer's written installation instructions and published drawings for products and applications.
- D. Cleaning: Clean areas and spaces where cutting and patching are performed. Completely remove paint, mortar, oils, putty, and similar materials.

END OF SECTION 017329

SECTION 017419 - CONSTRUCTION WASTE MANAGEMENT

PART 1 - GENERAL

1.1 SUMMARY

- A. This Section includes requirements for Construction Waste Management (CWM), with criteria for recycling and/or salvaging demolition and construction waste generated during the project. A Construction Waste Management Plan shall be developed for approval by the Owner. The Plan shall be implemented throughout the duration of the project and shall be documented in accordance with General Requirements, Section 017419, Subsection 1.3 (Submittals) below.

CWM is included as part of the LEED building goals for the Project, which are established in alignment with the DASNY Sustainability Policy for Construction, and the Project goals of the Owner.

- B. Responsible parties:

1. The Design-Builder shall provide a CWM plan to the Owner detailing the means and methods for recycling job site waste. The Design-Builder shall identify a single individual to act as the construction waste manager.

- C. Resources

1. NY CD Resource Center
727 East Washington Street
Syracuse, New York 13210
Bgriffin@syracusecoe.org (315) 443-9747

Initiated with support from Empire State Development, The NY CD Resource Center supports and promotes the growth of C&D recycling and building materials reuse (BMR) in New York State through a variety of market-development and network-building activities. Key among these activities is the provision of C&D materials management training to New York contractors and haulers, many of whom want to increase recycling at construction sites but need help getting started. The program also offers on-site assistance at construction sites.

2. ESD Recycling Market Information Database.
<http://appcenter.nylovesbiz.com/esdrecycling/>

1.2 PERFORMANCE REQUIREMENTS

- A. The Design-Builder shall prepare and submit a CWM Plan to the Owner for approval. The CWM Plan shall **outline** the provisions to be implemented to salvage for reuse or to recycle demolition and construction waste generated during the Project.

1. The end-of-project recycling rate when possible shall equal, at minimum, 75 percent for 2 LEED credits (by weight) of the total waste from construction, demolition, and land clearing activities.
 - a. The Design-Builder is encouraged to achieve higher levels of diversion from landfill if possible, as this benefits long-term landfill management and the LEED rating system awards additional points if exemplary performance levels are reached.

- B. The approved CWM Plan shall be implemented throughout the duration of the project and documented in accordance with General Requirements, Section 017419, Subsection 1.3 (Submittals) below.

C. The CWM Plan shall include, but not be limited to, the following components:

1. Re-Used materials/equipment: Materials or equipment to be removed from the site or turned over to the State shall be documented.
 - a. Documentation shall include the materials turned over, weight or quantity of materials/equipment and a letter on company letterhead indicating the intended use of items.
2. Listing of Targeted Materials: Develop a list of the waste materials from the Project that will be targeted for reuse, salvage, or recycling. The following materials shall be accounted for (materials that will not be recycled shall be indicated as such):
 - a. Cardboard, paper, packaging
 - b. Acoustical Ceiling Tiles
 - c. Clean dimensional wood, palette wood
 - d. Beverage containers
 - e. Land clearing debris
 - f. Concrete
 - g. Stone
 - h. Concrete Masonry Units (CMU)
 - i. Asphalt
 - j. Metals from banding, stud trim, ductwork, piping, rebar, roofing, windows, other trim, steel, iron, galvanized sheet steel, stainless steel, aluminum, copper, zinc, lead, brass, and bronze
 - k. Gypsum board
 - l. Carpet and pad
 - m. Paint
 - n. Asphalt roofing shingles if applicable for any existing building demolition
 - o. Rigid Foam
 - p. Glass
 - q. Plastics
 - r. Woods
3. Sorting Method: Provide a description of the proposed means of sorting and transporting the recyclable materials (whether materials will be on-site sorted and then hauled to designated centers, or whether mixed materials will be collected by a waste hauler and removed from the Site for off-Site sorting).
4. Recycling facilities: Provide the name of the recycling facilities(s) where materials will be sent for recycling, how it will be recycled, and the applicable fee(s).
5. Landfill Information: Provide the name of the landfill(s) where trash will be disposed of and the applicable landfill tipping fee(s).
6. Additional Information: Include any additional information deemed relevant to describe the scope and intent of the CWM Plan to the LEED AP or consultant.
7. Subcontractor Requirements: Construction Waste Management and recycling requirements shall be incorporated into all Subcontractors' contracts.

1.3 SUBMITTALS

A. Submittal Requirements:

1. A copy of the CWM Plan, as defined in General Requirements, Section 017419, Subsection 1.2 (Performance Requirements) above.
2. Submit a monthly Waste Management submission.
 - a. This submission shall include waste receipts and a completed Waste Management Form. (a sample form is attached to the Contract as Exhibit II).

3. Calculations and supporting documentation to demonstrate end-of-project recycling rates meeting the requirements of the CWM Plan. Note: These calculations and supporting documentation are required regardless of method of processing (on-site or off-site separations). Use these Solid Waste Conversion Factors only if tipping tickets are not available if the weight in each dumpster or container is not directly measured.

Solid Weight Conversion Factors	
Mixed Waste	350 lbs/cubic yard
Wood	300 lbs/cubic yard
Cardboard	100 lbs/cubic yard
Gypsum Board	500 lbs/cubic yard
Rubble	1,400 lbs/cubic yard
Steel	1,000 lbs/cubic yard

- a. Record and document the total weight (in tons) of all demolition and construction waste materials sent to the landfill or recycled or salvaged. Monthly Waste Management Reporting Forms shall be used as the basis for determining the total amount of waste recycled or salvaged for the project. The monthly reporting forms shall specify:
- 1) The number of dumpsters or other containers of recycled or salvaged materials for that month.
 - 2) The volume (in cubic yards) of each dumpster or container of recycled or salvaged materials for that month.
 - 3) The type of recycled or salvaged material contained in each dumpster or container.
 - 4) The weight of the recycled or salvaged material in each dumpster or container. For materials not contained in the Solid Waste Conversion Factors above propose a conversion factor for review by the LEED AP or Consultant.
 - 5) In addition, provide the name of the receiving facilities/companies that will be purchasing or accepting the recycled or salvaged materials. Receipts or other proof of facility reception of materials is required.
 - 6) For materials separated for recycling off-site, establish a method for tracking the weight of the recycled material. The method shall be included in the CWM Plan for the LEED AP or Consultant review and approval.
- b. In the case of off-site separation, ensure the transfer station used will provide tickets with required information on delivery weights (or volume with appropriate conversions), and proof of recycling rates for reporting.
- c. Calculate the end-of-project recycling rate percentage by dividing the recycled and salvaged waste (in tons) by the total waste generated (recycled, salvaged, and landfilled waste – also in tons), and multiplying by 100.
- d. For materials turned over to others for reuse, provide documentation on company letterhead indicating the material(s), the quantity (either by weight or units), the date and the intended reuse of the product.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 IMPLEMENTATION

The following implementations of the CWM Plan will be the responsibility of the Design-Builder:

- A. Containers: Provide containers and the removal of all waste, non-returned surplus materials, and rubbish from the site in accordance with the Waste Management Plan. Oversee and document the results of the Plan. The Design-Builder shall be responsible for collecting, sorting, and depositing in designated areas, their waste, non-returned surplus materials, and rubbish, as per the CWM Plan.
- B. Instruction: Provide on-site instruction of appropriate separation, handling and recycling, salvage, reuse and return methods to be used by all parties in appropriate stages of the Project.
- C. Separation of materials: Recycling and waste bin areas are to be kept neat and clean, and clearly marked.
 - 1. On-site separation: Lay out a specific area(s) to facilitate separation of materials for potential recycling, salvage, reuse and return. Each potential material shall be collected and stored to avoid being mixed with other materials
 - 2. Off-site separation: Lay out an area for collection of mingled recyclable and waste materials, to be picked up and sorted off-site for recycling.

3.2 MEETINGS

- A. Conduct Construction Waste Management meetings. Meetings shall include Subcontractors affected by the CWM Plan. At a minimum, waste management goals and issues shall be discussed at the following meetings:
 - 1. Pre-bid meeting.
 - 2. Pre-construction meeting.
 - 3. Regular job-site meetings.
- B. Any non-compliant practices in the field will be addressed at regular job-site meetings.

3.3 MONTHLY WASTE MANAGEMENT REPORTING FORMS

- A. Monthly Waste Management Reporting Forms, as required in the SUBMITTALS Article above, shall be submitted to the LEED AP or Consultant for review throughout the duration of the Project.

END OF SECTION 017419

SECTION 017700 – CONTRACT CLOSEOUT REQUIREMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and Notice of Substantial Completion (NOSC) Form, apply to this section.

1.2 SUMMARY

- A. In addition to the other requirements for Substantial Completion, this Section includes administrative requirements for preparation and submission of final Contract Closeout Documents, including, but not limited to, the following:

1. Contract Closeout Conference
2. Notice of Substantial Completion (NOSC) Requirements
 - a. Punchlist of Incomplete Work Items
 - b. Contract Turnover Documents
 - 1) As-Built Drawings
 - 2) As-built Specifications
 - 3) As-built Project Schedule
 - 4) Sustainability Documentation
 - 5) Permits, Licenses and Certificates
 - 6) Hazardous Wastes Documents
 - c. General Guarantee
 - d. Operation and Maintenance Manuals
3. Contract Closeout
4. Final Cleaning

- B. Related Sections:

1. General Conditions, Article 8 – Payment
2. General Conditions, Article 13 – Inspection and Acceptance
3. Section 014000 – Quality and Code Requirements
4. Section 017823 – Operation and Maintenance Manuals
5. Section 017839 – As-built Documents
6. Section 018113 – Sustainable Design Requirements

1.3 CONTRACT CLOSEOUT CONFERENCE

- A. Contract Closeout Conference: The Owner will schedule and conduct a Contract closeout conference, at a time convenient to the Owner, but no later than sixty (60) Days prior to the scheduled inspection date for Substantial Completion.

1. The Owner will conduct the conference to review requirements and responsibilities related to Contract closeout.
2. Attendees: Representatives of the Owner, testing agency, commissioning authority, and their consultants; Design-Builder and its superintendent; Design-Builder's Major Subcontractors; and other concerned parties shall attend the meeting. Participants at the meeting shall be familiar with Project and authorized to make binding decisions on matters relating to the Work.
3. Agenda: Discuss items of significance that could affect or delay Contract closeout, including the following:

- a. Status of Contract Turnover Documents.
- b. Procedures required prior to inspection for Substantial Completion and for final inspection for acceptance.
- c. Coordination of Turnover Documents with Integrated Workplace Management System (IWMS).
- d. Requirements for preparing sustainable documentation.
- e. Requirements for submitting final operation and maintenance manual.
- f. Requirements for Permits, Licenses and Certificates.
- g. Preparation of Design-Builder's proposed Punchlist of incomplete Work items.
- h. Procedures for processing Application for Payment at Substantial Completion and Final Payment.
- i. Submittal procedure.
- j. Installation of the Owner's furniture, fixtures, and equipment.
- k. Responsibility for removing temporary facilities and controls.

4. Minutes: The Design-Builder will record and distribute meeting minutes.

1.4 NOTICE OF SUBSTANTIAL COMPLETION (NOSC)

- A. Substantial Completion: After the Work of the Contract is determined by the Owner, to be at Substantial Completion, the Design-Builder shall submit a written request to the Owner for a date of inspection. The date of Substantial Completion establishes the start of the Warranty Callback Period.
- B. Documentation: The Notice of Substantial Completion (NOSC) form shall be executed at the end of inspection documenting incomplete Work items and submission of documents in accordance with this section that includes but is not limited to:
 - a. Preparation of a Punchlist of Work to be completed and corrected, the value of Work items on the list, and completion date of each Work item.
 - b. Submittal of contract turnover documents.
 - c. Submittal of operation and maintenance manuals, testing, adjustment and balance records.
 - d. Delivery of tools, spare parts, extra materials, and similar items to location designated by the Owner. Label with manufacturer's name and model number where applicable.
 - e. Make final changeover of permanent locks and deliver keys to the Owner. Advise the Owner of changeover.
 - f. Termination and removal of temporary facilities from Project site, along with mockups, construction tools, and similar elements.
 - g. Completion of final cleaning requirements.
- C. SAMPLE FORM - NOTICE OF SUBSTANTIAL COMPLETION (See Contract, Exhibit GG for form of Notice for Substantial Completion)

1.5 LIST OF INCOMPLETE ITEMS/PUNCHLIST DEVELOPMENT

- A. Creation of Punchlist.
- B. Organization of Punchlist: Submit list of incomplete items in EXCEL spreadsheet electronic format. Include name and identification of each space and area affected by construction operations for incomplete items and items needing correction including, if necessary, areas disturbed by Design-Builder that are outside the limits of construction.
 - 1. Organize items applying to each space by major element, including categories for ceiling, individual walls, floors, equipment, and building systems.
 - 2. Include the following information at the top of each page:
 - a. Project name and number.

- b. Date.
 - c. Name of Design-Builder or Subcontractor.
 - d. Page number.
- C. Re-inspection: Submit a written request for re-inspection. On receipt of request, the Owner will either proceed with inspection or notify the Design-Builder of unfulfilled requirements. After inspection, the Owner will notify the Design-Builder of items, either on the Design-Builder's Punchlist or additional items identified, that must be completed or corrected.
- 1. Re-inspection: Request re-inspection when the Work identified in previous inspections as incomplete is completed or corrected.
 - 2. Results of completed inspection will form the basis to proceed with commencement of Contract Closeout Documents.

1.6 CONTRACT TURNOVER DOCUMENTS

- A. Procedure: Contract turnover documents shall be transmitted to the Owner fifteen (15) Days prior to requesting inspection date for Substantial Completion.
- B. As-Built Drawings: Transmit one paper copy set of marked-up As-Built Drawings to the Owner. Print each Drawing, whether or not changes and additional information were recorded.
- C. As-built Specifications: Transmit one paper copy set of marked-up as-built specifications, including addenda and contract modifications to the Owner, with copy of transmittal to Owner.
- D. As-built Schedule: Submit one electronic (PDF) copy, certified by the Design-Builder, of the schedule that reflects the exact manner in which the Project was actually designed and constructed, to the Owner.
- E. Sustainability Documentation: Submit one electronic (PDF) copy of product data, costs, invoices, material lists, manifest, certifications, etc., to obtain project LEED certification. Refer to individual Specification Section 018113 – Sustainable Design Requirements for record-keeping and submittals required for USGBC LEED prerequisites.
- F. Permits, Licenses and Certificates Documents: Submit one copy of original permits, licenses, certifications, inspection reports, material certificates/affidavits, approvals, and related documents required by authorities having jurisdiction to obtain Letter of Completion, Certificate of Occupancy, or Code Compliance Certificate. Coordinate and respond to requirements from the Owner or Municipality and all other authorities having jurisdiction for issuance of approval/documents required for the Owner use and occupancy.
- 1. Cooperate and help coordinate with agency testing materials as specified in Section 014000 – Quality and Code Requirements. Testing Agency is required to submit final report of special inspections.
 - 2. The Design-Builder to provide one copy of original certification from agency or firm certifying the following and as required by individual Specification **Section**:
 - a. Sprinkler System – NFPA Forms for;
 - 1) Design-Builder's Material and Test Certificate for Underground Piping
 - 2) Design-Builder's Material and Test Certificate for Aboveground Piping
 - b. Fire Alarm System – NFPA 72 Form for;
 - 1) Record of Completion
 - c. Elevator – Certification Form from;
 - 1) Qualified Elevator Inspector (QEI)
 - d. Electrical – Certification Form from;
 - 1) Authority having jurisdiction
 - 2) Independent electrical inspection agency acceptable to the Owner

- G. Hazardous Waste Documents: Submit four (4) paper copies of documents to the Owner thirty (30) Days prior to requesting inspection date for Substantial Completion. Refer to individual Specification Sections for all requirements.
- H. Miscellaneous Record Submittals: Refer to individual Specification Sections for miscellaneous record-keeping requirements and submittals in connection with various construction activities. Submit one electronic (PDF) copy of each submittal.
- I. Reports: Submit written report indicating items incorporated in Contract Documents concurrent with progress of the Work, including modifications, concealed conditions, field changes, product selections, and other notations incorporated.

1.7 WARRANTY

- A. General Guarantee: Comply with General Conditions, Article 13 – Inspection and Acceptance. The date established on the Notice of Substantial Completion form constitutes commencement of the Warranty Callback Period.

1.8 OPERATION AND MAINTENANCE MANUALS

- A. Final Manuals Submittal: Submit Operation and Maintenance Manuals in final form as indicated in Section 017823 – Operation and Maintenance Manuals, to the Owner fifteen (15) Days prior to requesting date of inspection for Substantial Completion.

1.9 CONTRACT CLOSEOUT (same as final Application for Payment)

- A. Contract Compliance: The Design-Builder shall comply with the requirements of General Conditions, Section 26.05 – Governing Law and Venue.
- B. Preliminary Procedure: All Work and Extra Work of the Contract and requirements of this section must be complete and approved prior to commencement of Contract closeout.
 - 1. The Design-Builder shall request and submit to the Owner a final Design-Builder’s Pencil Copy billing request that will formulate the final Application for Payment.
 - 2. The Design-Builder shall provide outstanding documentation to the Owner in accordance with General Conditions, Article 20 – Opportunity Programs.
- C. Procedures: Upon the Owner’s approval of the Design-Builder’s Pencil Copy billing request, Contract closeout documents will be provided to the Design-Builder. The Design-Builder shall complete each document and submit all documents with original signature & notary as indicated on forms, the following:
 - 1. Final Application for Payment that includes remaining Retainage.
 - 2. Final Compliance Report.
 - 3. Design-Builder and Subcontractor Certifications Form.
 - 4. Design-Builder’s Certified Payroll Form.
 - 5. Release Form -- Final Payment to Design-Builder.
 - 6. Consent of Surety -- Final Payment to Design-Builder, with power of attorney.
- D. Payroll Forms: The Design-Builder and all of its Subcontractors shall submit original copies of the Design-Builder and Subcontractor Certifications Form and Design-Builder’s Certified Payroll Form.

PART 2 - PRODUCTS

2.1 CLEANING MATERIALS

- A. Cleaning Agents: Use cleaning materials and agents recommended by manufacturer or fabricator of the surface to be cleaned. Do not use cleaning agents that are potentially hazardous to health or property or that might damage finished surfaces.
 - 1. Use cleaning products that meet Green Seal GS-37, or if GS-37 is not applicable, use products that comply with allowable VOC levels.

PART 3 - EXECUTION

3.1 DEMOBILIZATION

- A. Deliver tools, spare parts, extra materials, and similar items to location designated by the Owner. Label with manufacturer's name and model number where applicable.
- B. Make final changeover of permanent locks and deliver keys to the Owner. Advise the Owner's personnel of changeover.
- C. Terminate and remove temporary facilities from the Project site, along with mockups, construction tools, and similar elements.

3.2 RECORDING AND MAINTENANCE

- A. Recording: Maintain one copy of each submittal during the construction period for contract turnover document purposes. Post changes and modifications to contract turnover documents as they occur; do not wait until the end of the Project.
- B. Maintenance of Turnover Documents and Samples: Store turnover documents and Samples in the field office apart from the Contract Documents used for construction. Contract turnover documents shall not be used for construction purposes. Maintain turnover documents in good order and in a clean, dry, legible condition, protected from deterioration and loss. Provide access to contract turnover documents for the Owner's reference during normal working hours during performance of Contract.

3.3 FINAL CLEANING

- A. General: Perform final cleaning. Conduct cleaning and waste-removal operations to comply with local Laws and ordinances and Federal and local environmental and antipollution regulations.
- B. Cleaning: Employ experienced workers or professional cleaners for final cleaning. Clean each surface or unit to condition expected in an average commercial building cleaning and maintenance program. Comply with manufacturer's written instructions.
 - 1. Complete the following cleaning operations as applies to Work of the contract.
 - a. Clean Project site, yard, and grounds, in areas disturbed by construction activities, including landscape development areas, of rubbish, waste material, litter, and other foreign substances.
 - b. Sweep paved areas broom clean. Remove petrochemical spills, stains, and other foreign deposits.
 - c. Rake grounds that are neither planted nor paved to a smooth, even-textured surface.
 - d. Remove tools, construction equipment, machinery, and surplus material from Project site.
 - e. Remove snow and ice to provide safe access to building.
 - f. Clean exposed exterior and interior hard-surfaced finishes to a dirt-free condition, free of stains, films, and similar foreign substances. Avoid disturbing natural weathering of exterior surfaces. Restore reflective surfaces to their original condition.

- g. Remove debris and surface dust from limited access spaces, including roofs, plenums, shafts, trenches, equipment vaults, manholes, attics, and similar spaces.
 - h. Sweep concrete floors broom clean in unoccupied spaces.
 - i. Vacuum carpet and similar soft surfaces, removing debris and excess nap; shampoo if visible soil or stains remain. Replace if soil or stains remain after shampooing.
 - j. Clean transparent materials, including mirrors and glass in doors and windows. Remove glazing compounds and other noticeable, vision-obscuring materials. Replace chipped or broken glass and other damaged transparent materials. Polish mirrors and glass, taking care not to scratch surfaces.
 - k. Remove labels that are not permanent.
 - l. Touch up and otherwise repair and restore marred, exposed finishes and surfaces. Replace finishes and surfaces that cannot be satisfactorily repaired or restored or that already show evidence of repair or restoration.
 - 1) Do not paint over "UL" and other required labels and identification, including mechanical and electrical nameplates.
 - m. Wipe surfaces of mechanical and electrical equipment and similar equipment. Remove excess lubrication, paint and mortar droppings, and other foreign substances.
 - n. Replace parts subject to operating conditions during construction that may impede operation or reduce longevity.
 - o. Clean plumbing fixtures to a sanitary condition, free of stains, including stains resulting from water exposure.
 - p. Clean light fixtures, lamps, globes, and reflectors to function with full efficiency. Replace burned-out bulbs, and those noticeably dimmed by hours of use, and defective and noisy starters in fluorescent and mercury vapor fixtures to comply with requirements for new fixtures.
 - q. Leave Project clean and ready for occupancy.
- C. Construction Waste Disposal: Comply with waste disposal requirements in all other applicable sections.

END OF SECTION 017700

SECTION 017823 - OPERATION AND MAINTENANCE MANUALS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and Design-Builder's Submission Schedule, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for preparing operation and maintenance manuals, including the following:
 - 1. Operation and maintenance manual for systems, subsystems, and equipment.
 - 2. Product maintenance data.
 - 3. Systems and equipment maintenance data.
- B. Related Sections:
 - 1. Section 017700 – Contract Closeout Requirements
 - 2. Section 018113 – Sustainable Design Requirements
 - 3. Section 019113 – General Commissioning Requirements
 - 4. General Conditions, Section 4.22 (R) – Integrated Workplace Management System

1.3 DEFINITIONS

- A. System: An organized collection of parts, equipment, or subsystems united by regular interaction.
- B. Subsystem: A portion of a system with characteristics similar to a system.

1.4 CLOSEOUT SUBMITTALS

- A. Required Manuals: Section 017700 – Contract Closeout Requirements describes number and type of copies required for contract closeout requirements.

PART 2 - PRODUCTS

2.1 REQUIREMENTS FOR OPERATION, AND MAINTENANCE MANUALS

- A. Organization: Organize the manual into separate sections by CSI number based on the table of contents of the project manual, for each system and subsystem, and a separate section for each piece of equipment not part of a system. Coordinate with Integrated Workplace Management System to provide required information. The manual shall contain the following materials, in the order listed:
 - 1. Title page.
 - 2. Table of contents.
 - 3. Manual contents:
 - a. Operation data.
 - b. Product maintenance data.
 - c. Systems and equipment data

B. Title Page: Include the following information:

1. Subject matter included in manual.
2. Name and address of Project.
3. Name and address of Owner.
4. Date of submittal.
5. Name and contact information for Design-Builder.
6. [If required by Owner, name and contact information for Construction Manager.]
7. Name and contact information for Design Professional.
8. [Name and contact information for Commissioning Agent.]
9. Names and contact information for the Design-Builder's Design Subcontractors that designed the systems contained in the manuals.
10. Cross-reference to related systems in other operation and maintenance manuals.

C. Table of Contents: List each product included in manual, identified by product name, indexed to the content of the volume, and cross-referenced to Specification Section number in Project Manual.

1. If operation or maintenance documentation requires more than one volume to accommodate data, include comprehensive table of contents for all volumes in each volume of the set.

D. Manual Contents: Organize into sets of manageable size. Arrange contents alphabetically by system, subsystem, and equipment. If possible, assemble instructions for subsystems, equipment, and components of one system into a single binder.

E. Manuals, Electronic Copy: Submit electronic (PDF) copy of the manual, to the Owner and Owner's Technical Advisor, concurrent with Action Submittal.

2.2 OPERATION DATA

A. Content: In addition to requirements in this Section, include operation data required in individual Specification Section and the following information:

1. System, subsystem, and equipment descriptions. Use designations for systems and equipment indicated on Contract Documents.
2. Operating standards.
3. Operating procedures.
4. Operating logs.
5. [Wiring diagrams.
6. Control diagrams.
7. Piped system diagrams.]
8. Precautions against improper use.
9. [License requirements including inspection and renewal dates.]

B. Descriptions: Include the following:

1. Product name and model number. Use designations for products indicated on Contract Documents.
2. Manufacturer's name.
3. [Equipment identification with serial number of each component.
4. Equipment function.
5. Operating characteristics.
6. Limiting conditions.
7. Performance curves.
8. Engineering data and tests.
9. Complete nomenclature and number of replacement parts.]

C. Operating Procedures: Include the following, as applicable:

1. Start-up procedures.
2. Equipment or system break-in procedures.
3. Routine and normal operating instructions.
4. Regulation and control procedures.
5. Instructions on stopping.
6. Normal shutdown instructions.
7. Seasonal and weekend operating instructions.
8. Required sequences for electric or electronic systems.
9. Special operating instructions and procedures.

D. Systems and Equipment Controls: Describe the sequence of operation, and diagram controls as installed.

E. Piped Systems: Diagram piping as installed, and identify color-coding where required for identification.

2.3 PRODUCT MAINTENANCE DATA

A. Content: Organize data into a separate section, within the O & M Manual, for each product, material, and finish. Include source information, product information, maintenance procedures, repair materials and sources, and warranties and bonds, as described below.

B. Source Information: List each product included in section identified by product name and arranged to match manual's table of contents. For each product, list name, address, and telephone number of Installer or supplier and maintenance service agent, and cross-reference Specification Section number and title in Project Manual and drawing or schedule designation or identifier where applicable.

C. Product Information: Include the following, as applicable:

1. Product name and model number.
2. Manufacturer's name.
3. Color, pattern, and texture.
4. Material and chemical composition.
5. Reordering information for specially manufactured products.

D. Maintenance Procedures: Include manufacturer's written recommendations and the following:

1. Inspection procedures.
2. Types of cleaning agents to be used and methods of cleaning.
3. List of cleaning agents and methods of cleaning detrimental to product.
4. Schedule for routine cleaning and maintenance.
5. Repair instructions.

E. Repair Materials and Sources: Include lists of materials and local sources of materials and related services.

F. Warranties and Guarantees: Include copies of warranties and guarantees lists of circumstances and conditions that would affect validity of warranties.

1. Include procedures to follow and required notifications for warranty claims.

2.4 SYSTEMS AND EQUIPMENT MAINTENANCE DATA

A. Content: For each system, subsystem, and piece of equipment not part of a system, include source information, manufacturers' maintenance documentation, maintenance procedures, maintenance and service schedules, spare

parts list and source information, maintenance service contracts, and warranty and bond information, as described below.

- B. **Source Information:** List each system, subsystem, and piece of equipment included in a separate section within the O & M Manual identified by product name and arranged to match manual's table of contents. For each product, list name, address, and telephone number of Installer or supplier and maintenance service agent, and cross-reference Specification Section number and title in Project Manual and drawing or schedule designation or identifier where applicable.
- C. **Manufacturers' Maintenance Documentation:** Manufacturers' maintenance documentation including the following information for each component part or piece of equipment:
 - 1. Standard maintenance instructions and bulletins.
 - 2. Drawings, diagrams, and instructions required for maintenance, including disassembly and component removal, replacement, and assembly.
 - 3. Identification and nomenclature of parts and components.
 - 4. List of items recommended to be stocked as spare parts.
- D. **Maintenance Procedures:** Include the following information and items that detail essential maintenance procedures:
 - 1. Test and inspection instructions.
 - 2. Troubleshooting guide.
 - 3. Precautions against improper maintenance.
 - 4. Disassembly; component removal, repair, and replacement; and reassembly instructions.
 - 5. Aligning, adjusting, and checking instructions.
 - 6. Demonstration and training video recording, if available.
- E. **Maintenance and Service Schedules:** Include service and lubrication requirements, list of required lubricants for equipment, and separate schedules for preventive and routine maintenance and service with standard time allotment.
 - 1. **Scheduled Maintenance and Service:** Tabulate actions for daily, weekly, monthly, quarterly, semiannual, and annual frequencies.
 - 2. **Maintenance and Service Record:** Include manufacturers' forms for recording maintenance.
- F. **Spare Parts List and Source Information:** Include lists of replacement and repair parts, with parts identified and cross-referenced to manufacturers' maintenance documentation and local sources of maintenance materials and related services.
- G. **Warranties:** Include copies of warranties and lists of circumstances and conditions that would affect validity of warranties.
 - 1. Include procedures to follow and required notifications for warranty claims. |

PART 3 - EXECUTION

3.1 MANUAL PREPARATION

- A. Operation and Maintenance Documentation shall be coordinated with Integrated Workplace Management system requirements and provided for review, concurrent, with Action Submittal specified in individual Specification Section.

1. Correct or modify the manual to comply with the Owner's and Commissioning Authority's comments. Submit copies of each corrected manual within fifteen (15) Days of receipt of Owner's and Commissioning Authority's comments and prior to commencing demonstration and training.
- B. Product Maintenance Data: Assemble a complete set of maintenance data, in a separate section, within the O & M Manual, indicating care and maintenance of each product, material, and finish incorporated into the Work.
- C. Operation and Maintenance Data: Assemble a complete set of operation and maintenance data, in a separate section, within the O & M Manual, indicating operation and maintenance of each system, subsystem, and piece of equipment not part of a system.
1. Engage a factory-authorized service representative to assemble and prepare information for each system, subsystem, and piece of equipment not part of a system.
 2. Prepare a separate section within the O & M Manual, for each system and subsystem, in the form of an instructional manual for use by operating personnel.
- D. Manufacturers' Data: Where manual contain manufacturers' standard printed data; include only sheets pertinent to product or component installed. Mark each sheet to identify each product or component incorporated into the Work. If data include more than one item in a tabular format, identify each item using appropriate references from the Contract Documents. Identify data applicable to the Work and delete references to information not applicable.
1. Prepare supplementary text if manufacturers' standard printed data are not available and where the information is necessary for proper operation and maintenance of equipment or systems.
- E. Drawings: Prepare drawings supplementing manufacturers' printed data to illustrate the relationship of component parts of equipment and systems and to illustrate control sequence and flow diagrams. Coordinate these drawings with information contained in As-Built Drawings to ensure correct illustration of completed installation.
1. Do not use original project As-Built or record documents as part of operation and maintenance manuals.

END OF SECTION 017823

SECTION 017839 – AS BUILT DOCUMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for As-built documents, including the following:
 - 1. As-built Drawings
 - 2. As-built Specifications
 - 3. As-built Project Schedule
 - 4. Record Product Data
 - 5. Miscellaneous record submittals
- B. Related Sections:
 - 1. Section 013200 – Construction Progress Documentation
 - 2. Section 013300 – Submittal Procedure; Required Submittal List
 - 3. Section 017700 – Contract Closeout Requirements
 - 4. Section 017823 – Operation and Maintenance Manuals
 - 5. General Conditions, Section 4.22 (R) – Integrated Workplace Management System
- C. Administrative and procedural requirements for contract turnover documents, including, but not limited to the following, as provided in individual Specifications Sections.
 - 1. Sustainability Documentation
 - 2. Commissioning Documents
 - 3. Hazardous Waste Documents

1.3 CLOSEOUT SUBMITTALS

- A. Required Documents: Section 017700 – Contract Closeout Requirements, describes administrative requirements for submission, number and type of copies required for contract closeout requirements.

PART 2 - PRODUCTS

2.1 AS-BUILT DRAWINGS

- A. As-Built Drawings: Maintain one set of marked-up paper copies of the Contract Drawings and Shop Drawings onsite. Review As-Built Drawings and shop drawings monthly with the Owner, for approval. In addition, the final set of As-Built Drawings shall be delivered to Owner in electronic format as required by Owner and be compatible with Owner's IWMS.
 - 1. Preparation: Daily mark As-Built Drawings to show the actual installation where installation varies from that shown originally. Require individual or entity who obtained record data, whether individual or entity is Installer, subcontractor, or similar entity, to provide information for preparation of corresponding marked-up As-Built Drawings.

- a. Give particular attention to information on concealed elements that would be difficult to identify or measure and record later.
 - b. Accurately record information in an acceptable drawing technique.
 - c. Record data as soon as possible after obtaining it.
 - d. Record and check the markup before enclosing concealed installations.
2. Content: Types of items requiring marking include, but are not limited to, the following:
- a. Dimensional changes to Drawings.
 - b. Revisions to details shown on Drawings.
 - c. Depths of foundations below first floor.
 - d. Locations and depths of underground utilities.
 - e. Revisions to routing of piping and conduits.
 - f. Revisions to electrical circuitry.
 - g. Actual equipment locations.
 - h. Duct size and routing.
 - i. Locations of concealed internal utilities.
 - j. Changes made by Change Order.
 - k. Changes made following the Owner's written orders.
 - l. Details not on the original Contract Drawings.
 - m. Field records for variable and concealed conditions.
 - n. Record information on the Work that is shown only schematically.
3. Mark the Contract Drawings and Shop Drawings completely and accurately. Utilize personnel proficient at recording graphic information in production of marked-up as-built prints.
 4. Mark as-built sets with erasable, red-colored pencil. Use other colors to distinguish between changes for different categories of the Work at same location.
 5. Mark important additional information that was either shown schematically or omitted from original Drawings.
 6. Note Change Order numbers and similar identification, where applicable.

2.2 AS-BUILT SPECIFICATIONS

- A. Preparation: Mark Specifications to indicate the actual product installation where installation varies from that indicated in Specifications, addenda, and contract modifications.
1. Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.
 2. Mark copy with the proprietary name and model number of products, materials, and equipment furnished, including substitutions and product options selected.
 3. Record the name of manufacturer, supplier, Installer, and other information necessary to provide a record of selections made.
 4. For each principal product, indicate whether record Product Data has been submitted in operation and maintenance manuals instead of submitted as record Product Data.
 5. Note related Change Orders, record Product Data, and turnover Drawings where applicable.

2.3 AS-BUILT PROJECT SCHEDULE

- A. Final Schedule: Submit to the Owner a final schedule update. The As-Built Project Schedule shall reflect the exact manner in which the Project was actually designed and constructed including actual start and finish dates, activities, sequences and logic.
1. The Design-Builder shall certify the final Project Schedule update as being a true reflection of the way the Project was actually designed and constructed.

2.4 RECORD PRODUCT DATA

- A. Preparation: Mark Product Data to indicate the actual product installation where installation varies substantially from that indicated in Product Data submittal.
 - 1. Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.
 - 2. Include significant changes in the product delivered to the Project site and changes in manufacturer's written instructions for installation.
 - 3. Note related Change Orders, As-built Specifications, and As-Built Drawings where applicable.

2.5 MISCELLANEOUS RECORD SUBMITTALS

- A. Assemble miscellaneous records required by individual Specification Sections for miscellaneous record keeping and submittal in connection with actual performance of the Work. Bind or file miscellaneous records and identify each, ready for continued use and reference.
- B. Format: Submit miscellaneous record submittals.
 - 1. Include miscellaneous record submittals directory organized by specification section number and title, electronically linked to each item of miscellaneous record submittals.

PART 3 - EXECUTION

3.1 RECORDING AND MAINTENANCE

- A. Maintain Change Log: Maintain and submit written change log to the Owner, monthly for review indicating items incorporated in contract turnover documents concurrent with progress of the Work, including modifications, concealed conditions, field changes, product selections, and other notations incorporated.
- B. Recording: Maintain one copy of each submittal during the construction period for contract turnover document purposes. Post changes and modifications to contract turnover documents as they occur; do not wait until the end of the Project.
- C. Maintenance of Turnover Documents and Samples: Store turnover documents and Samples in the field office apart from the Contract Documents used for construction. Contract turnover documents are not to be used for construction purposes. Maintain turnover documents in good order and in a clean, dry, legible condition, protected from deterioration and loss. Provide access to contract turnover documents for the Owner's reference during normal working hours during performance of Contract.

END OF SECTION 017839

SECTION 018113 - SUSTAINABLE DESIGN REQUIREMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Specified as Work of the Contract Documents, this section includes general requirements and procedures for compliance with certain USGBC LEED prerequisites and credits needed for Project to obtain LEED certification; Silver, Gold, or Platinum based on LEED-BD+C, Version 4.

- 1. Other LEED prerequisites and credits needed to obtain LEED certification depend on material selections and may not be specifically identified as LEED requirements. Compliance with requirements needed to obtain LEED prerequisites and credits may be used as one criterion to evaluate substitution requests and comparable product requests.

- B. Related Sections:

- 1. Section 013300 – Submittal Procedure, for administrative procedures on submittals.
 - 2. Individual Specification Sections for LEED requirements specific to the work of each of these Sections. Requirements may or may not include reference to LEED.

1.3 DEFINITIONS

- A. Chain-of-Custody Certificates: Certificates signed by manufacturers certifying that wood used to make products was obtained from forests certified by an FSC-accredited certification body, "FSC Principles and Criteria for Forest Stewardship." Certificates shall include evidence that manufacturer is certified for chain of custody by an FSC accredited certification body.

- B. LEED: Leadership in Energy & Environmental Design.

- C. Not Used.

- D. Regional Materials: Materials that have been extracted, harvested, or recovered, as well as manufactured, within 500 miles of Project site. If only a fraction of a product or material is extracted/harvested/recovered and manufactured locally, then only that percentage (by weight) shall contribute to the regional value.

- E. Recycled Content: The recycled content value of a material assembly shall be determined by weight. The recycled fraction of the assembly is then multiplied by the cost of assembly to determine the recycled content value.

- 1. "Post-consumer" material is defined as waste material generated by households or by commercial, industrial, and institutional facilities in their role as end users of the product, which can no longer be used for its intended purpose.
 - 2. "Pre-consumer" material is defined as material diverted from the waste stream during the manufacturing process. Excluded is reutilization of materials such as rework, regrind, or scrap generated in a process and capable of being reclaimed within the same process that generated it.

1.4 SUBMITTALS

- A. General: Submit additional LEED submittals to comply with Section 013300 – Submittal Procedure.
- B. LEED submittals are in addition to other submittals. If submittal item is identical to that submitted to comply with other requirements, submit duplicate copies as a separate submittal to verify compliance with indicated LEED requirements.
- C. Project Materials Cost Data: Provide statement indicating total cost for materials used for Project. Costs exclude labor, overhead, and profit. Include breakout of costs for the following categories of items:
 - 1. Furniture.
 - 2. Plumbing.
 - 3. Mechanical.
 - 4. Electrical.
 - 5. Specialty items such as elevators and equipment.
 - 6. Wood-based construction materials.
- D. LEED Action Plans: Provide preliminary LEED charrette and action plan within thirty (30) Days of the Effective Date indicating how the Design-Builder will achieve the LEED credits applicable to the Project.
- E. LEED Progress Reports: Concurrent with each Application for Payment, submit reports comparing actual construction and purchasing activities with LEED action plans.
- F. LEED Documentation Submittals: Provide submittals required by LEED Version 4 for each credit sought.

1.5 QUALITY ASSURANCE

- A. LEED Coordinator: The Design Builder shall engage an experienced LEED-Accredited Professional to coordinate LEED requirements. LEED coordinator may also serve as waste management coordinator.

PART 2 - PRODUCTS – Design-Builder shall use products required by LEED Version 4 for credits sought.

PART 3 - EXECUTION – Design-Builder shall execute the LEED-related Work as required by LEED Version 4 for credits sought.

END OF SECTION 018113

SECTION 019113 - GENERAL COMMISSIONING REQUIREMENTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contract Documents, including but not limited to, the Drawings and individual Specification Sections and the Commissioning Plan, apply to this Section.

1.2 SUMMARY

- A. General. Section includes general, procedural, and administrative requirements that apply to implementation of commissioning.

Commissioning Process.

1. This Project will include building commissioning. Building commissioning is a quality assurance process that begins in design and continues through construction into an occupancy and turn-over phase that documents buildings are designed, installed, and operationally tested to meet the owner's needs and the design intent and can be maintained and operated successfully into the future.
 2. The commissioning process is developed and directed by the Commissioning Authority (CxA), an independent entity provided by the Owner. Commissioning is implemented in unison with the Commissioning Authority (CxA) and, but not limited to, the Commissioning Agent (CA). The Commissioning Agent (CA) for this (Design-Build) contract is defined as the Design-Build entity which encompasses both the Design Professional(s) and the Contractor(s) that have significant commissioning task responsibility.
- B. General Provisions for Commissioning:
 1. Selected building systems and equipment to be commissioned as identified in Technical Specifications, Division 24.
 2. The commissioning process shall be directed by the Commissioning Authority (CxA) provided by the Owner. The Commissioning Agent (CA) for this contract encompasses the commissioning responsibility of both Designer(s) and Contractor(s) and shall be responsible for executing the commissioning process as directed by the Commissioning Authority (CxA), and as defined in Technical Specifications, Division 24.
 3. The Design-Builder shall act as the Commissioning Agent, and include responsibilities for each Commissioning Team member including the Commissioning Agent (CA).
 - C. Related Sections:
 1. General Conditions, General Requirements, Commissioning Specification Sections listed in Technical Specifications, Division 24, and Sections referenced in Technical Specifications, Division 24 apply to this Section.
 2. General Conditions, Section 4.22 (R) – Integrated Workplace Management System
 - D. References:
 1. Owner's Project Requirements (OPR), Design-Builder's Basis of Design for LEED (BOD-L).
 2. Dormitory Authority State of New York: Building Commissioning Guidelines – 2013
 3. Dormitory Authority State of New York: Design Submission Requirements
 4. ASHRAE Standard 202-2013: The Commissioning Process for Buildings and Systems
 5. ASHRAE Guideline 0-2005: The Commissioning Process
 6. ASHRAE Guideline 1.1-2007: HVAC & R Technical Requirements for the Commissioning Process.

1.3 DEFINITIONS

- A. Basis of Design for LEED (BOD-L): A document prepared by the Design-Builder's Design Professional that records how the Design-Builder has met the Owner's Project Requirements (OPR). It includes the concepts, calculations, decisions, and product selections and how applicable regulatory requirements, standards, and guidelines have been met. The document includes descriptions and lists of individual items that support the design process.
- B. Commissioning (Cx): A quality assurance process that documents specified systems and components are provided and tested to meet the Owner's needs and the Owner's Project Requirements (OPR) in accordance with the Contract Documents.
- C. Commissioning Agent (CA): The Design-Builder. For the purposes of commissioning, the Design-Builder shall assume the role, tasks, and responsibilities of the Commissioning Agent (CA). Note that per the Owner's Building Commissioning Guidelines, the Owner does not allow the Commissioning Authority (CxA) and Commissioning Agent (CA) to be the same organization or person. The Commissioning Agent (CA) shall assign a representative with expertise and authority to act on its behalf to participate in the commissioning process. Note, for this contract and in the context of the commissioning process, Design Builder or Commissioning Agent (CA) is defined as the Design Build entity which encompasses both the Design-Builder's Design Professional(s) and the Design-Builder's Subcontractor(s) that have significant commissioning task responsibility.
- D. Commissioning Authority (CxA): The Professional, appointed by the Owner, to direct and coordinate the commissioning process.
- E. Commissioning Plan (Cx Plan): A document, prepared by the Commissioning Authority (CxA), defining the commissioning process including schedules, responsibilities, documentation requirements, and functional performance test requirements.
- F. Commissioning Team: The Commissioning Team shall consist of, but not be limited to the Owner, Design Builder, its Design Professional, Design-Builder's Commissioning Agent (CA), and Design-Builder's Subcontractors, Commissioning Authority (CxA), individuals and entities as deemed appropriate by the Commissioning Authority (CxA).
- G. Not Used.
- H. Owner's Project Requirements (OPR): A document prepared by the Design-Builder's Design Professional (on the Owner's behalf) that defines the functional requirements and the expectations for operation.
- I. Systems and Energy Management Manual: A composite document that expands the scope of the operation and maintenance manual by including additional information gathered by the commissioning process as required by the New York State Green Building Tax Credit (6 NYCRR 638.8 (k) (2)).

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

- A. The Design-Builder shall participate and provide services in the Building Commissioning Process as set forth in the Owner's Project Requirements (OPR), the Basis of Design for LEED (BOD-L), the Commissioning Plan, the applicable contract documents, and comply with relevant sections of New York State Executive Order 88, NYS Executive Order 166, NY State Energy Efficiency Conservation Code, Chapter 4-Commercial Energy Efficiency, Section 408-System Commissioning, the LEED (Leadership in Energy and Environmental Design) Rating System, Green Building Tax Credit- Commissioning (6 NYCRR 638.8), the DASNY Building Commissioning Guidelines, Article 13 of the New York State Energy Law – the Green Building Construction Act, ASHRAE

Standard 202-2013, the Commissioning Process for Buildings and Systems, ASHRAE Guideline 0-2013, and other building commissioning related documents as applicable. The work will also comply with the referenced standards and guidelines identified in the "Codes, Applicable Codes, Guidelines & Standards on page 229 of the BOD. The intent of "building commissioning" in this context encompasses the entirety of the commissioning requirements for the project. Note that this Article and the Commissioning language in the Basis of Design document will serve as the Pre-Design Phase Commissioning Plan until Schematic Design Phase when the Owner's Commissioning Authority (CxA) will revise and distribute the first version of the Design Phase Commissioning Plan.

- B. Commissioning will include scope and tasks for all responsible parties. The commissioning process is developed and directed by the Commissioning Authority (CxA), an independent entity provided by the owner. Commissioning is implemented by the Commissioning Agent (CA).
- C. The Design-Builder shall provide the services of the Commissioning Agent (CA). Commissioning Agent (CA), for this Contract encompasses the commissioning responsibilities of both the Design-Builders Design Professionals and Design-Builder(s)-Commissioning Agent (CA) that have significant commissioning task responsibility.
- D. The Design-Builder shall fulfill the Commissioning Agent (CA) responsibilities by providing a professional commissioning firm that will manage the Commissioning Agent (CA) tasks, both design and construction. The professional commissioning firm must have a minimum of ten years of experience commissioning projects from design through construction, have commissioned a minimum of five projects with a total construction cost of one hundred million dollars or more, and have commissioned a minimum of three lab projects with similar characteristics to this project. The Commissioning Agent's (CA) primary representative shall have a NYS professional engineer's license earned in mechanical engineering and must have a minimum of ten years of experience with commissioning projects from design through construction, and have Research & Development ("R&D") (such as National Lab) project commissioning experience with similar characteristics to this project.
- E. The Design-Builder-Commissioning Agent (CA) shall perform the specific task(s) and provide the specific work product(s) required by the Owner's Project Requirements (OPR), the Basis of Design for LEED (BOD-L), and the applicable Contract Documents. The Design-Builder-Commissioning Agent services shall be in accordance with the following and include, but not be limited to:
 - 1. Definition of Commissioning: Building commissioning is a quality assurance process that begins at design inception and programing, and continues through construction into an occupancy and turn-over phase that documents buildings are designed, installed, and operationally tested to meet the Owner's needs and the Owner's Project Requirements (OPR).
 - 2. Be a primary participant in the commissioning process from programming and design inception, through construction and turn-over phase, and provide support and documentation as defined in the Owner's Project Requirements (OPR), Basis of Design (BOD-L), Commissioning Authorities (CxA), Commissioning Plans (both in design and construction/turn-over phases), and applicable contract documents. The Design Builder must submit its Commissioning Agent (CA) qualifications submittal to the Owner and Commissioning Authority (CxA) for approval prior to entering into contract with the Commissioning Agent (CA). The Design-Builder will review and coordinate with the Commissioning Authorities scope of work.
 - 3. Develop the Owner's Project Requirements (OPR) and the Basis of Design for LEED (BOD-L).
 - 4. The Owner's Commissioning Authority will initiate writing applicable portions of the commissioning specifications, Indoor Air Quality (IAQ) requirements of the Green Building Tax Credit (6 NYCRR 638.7 (d), as amended in the DASNY Building Commissioning Guidelines, and related specifications. The Design-Builder-Commissioning Agent (CA) will adopt, coordinate, and complete such specifications.

5. Participate in the commissioning process, such as: Review and address Commissioning Authority (CxA) design review comments; Attend commissioning meetings; review and coordinate with commissioning plans and process documentation; review pre-functional, start-up, and functional performance test procedures and test results, and coordinate resolution of design, construction, and turn-over phase issues related to the commissioning process. For example, this includes but is not limited to a commissioning submittal review process, commissioning deliverable reviews such as: commissioning design reviews comments, field reports, test reports, Testing and Balancing (TAB) and Indoor Air Quality plans (IAQ) and reports, energy management plans, deficiency logs, off-season test reports, etc.
 6. Provide Certificate of Readiness prior to Functional Performance Testing stating that start-up and checkout have been successfully completed and that all equipment, systems, and controls are complete and ready for functional performance testing.
 7. Provide Operations and Maintenance (O&M) manuals, Operations and Maintenance (O&M) training syllabi, as well as Operations and Maintenance (O&M) training and associated documentation, comment on completeness and adequacy in accordance with the Owner's Project Requirements (OPR) and Contract Documents;
 8. Assist with, review, and approve the systems & energy management manuals and Commissioning Authority (CxA) Final Report(s);
 9. Provide "System Certification" (as required and defined in current NYS Energy Code Section 103.2.2) from the applicable design professional.
 10. Participate in the deferred or off-season testing results reviews, post occupancy commissioning meetings and report reviews, as well as post occupancy three year monitoring based commissioning process and report reviews;
- F. Commissioning will be performed on all systems, equipment, and components as listed below, and meet the requirements of the following:
1. Green Building Tax Credit-Commissioning (6 NYCRR 638.8) and Indoor Air Quality (IAQ) (6 NYCRR 638.7 (d), and LEED prerequisite as well as enhanced commissioning credit requirements. A project specific list defining the equipment and systems to be commissioned will be in the approved Commissioning Authority (CxA) Services Scope of Work, and the design contract documents. Commissioning will include, but not be limited to the following as applicable to this specific project.
 2. All cooling systems, such as chillers, cooling towers, unitary and split air conditioners, and process conditioners for HVAC and related lab program needs, and associated controls;
 3. All heating systems, such as boilers, furnaces, heaters, heat exchangers, and process heating conditioners for HVAC and related lab program needs, and associated controls;
 4. All fluid conveying systems, such as HVAC, domestic water, service water, lab fluid supply and waste systems, fire protection water systems, pumps, process systems, associated piping, valves, insulation, controls, pressurization control, and balancing;
 5. All air and gas conveying systems, including lab air and gas systems, such as fans, ductwork, associated dampers including automated opening protectives (fire and combination fire/smoke dampers), insulation, controls, pressurization control, and balancing;
 6. Indoor Air Quality (IAQ) systems during construction, and post construction systems for occupancy, Air quality monitoring systems as they relate to ventilation systems and related lab program needs, such as radon mitigation systems;

7. Controls for central plant, building HVAC, specialty systems related to lab program needs, including automated sub-meters, automated lighting and day-lighting controls energy management systems, building automation systems, Integrated Workplace Management System (IWMS), and integration of systems as applicable;
 8. Electric power systems, and emergency power systems; as an example: confirming independent circuiting for emergency power systems, lab specialty equipment, plug load distribution, and lighting;
 9. Renewable and alternative energy technologies, waste heat recovery, thermal storage equipment;
 10. The program requirements of this laboratory facility such as Anthropod Containment Level-3 (ACL-3), Biosafety Level-2 & 3 (BSL-2 & 3), Server Rooms, Clean Rooms, Vivariums, Animal Biosafety Level-3 (ABSL-3) spaces, Nuclear Chemistry Labs, and associated lab and office program spaces; (See the Basis of Design for complete program requirements.)
 11. Commissioning will performed on other building systems and components such as vibration control, telecommunications, audio/video, VoIP, closed circuit TV, security, laboratory specialty systems, such as specialty gases, vacuum, reverse osmosis, de-ionized water, lab disposal and specialty drainage systems, chemical fume hoods and biosafety cabinets, emergency eye wash and showers, various types glove boxes, compressed gas systems and all pressure vessels, flammable and hazardous storage and delivery systems, explosion proof hoods and cabinets, radioactive materials and radiation producing equipment, lasers, decontamination systems, equipment and systems dealing with nanoparticles and nanomaterials, equipment monitoring, and intrusion detection, as applicable;
 12. All primary systems, equipment, and components must be commissioned in their entirety. No sampling strategies should be applied to Functional Performance Testing of primary systems and equipment, or their control sequences. All systems, equipment (except for bench top equipment), and components associated with labs, server rooms, clean rooms, vivarium's, associated lab and office spaces, shall also be commissioned in their entirety without sampling strategies. All automated opening protectives (fire and combination fire/smoke dampers) should be commissioned in their entirety, with installation verification and dynamic testing to ensure proper operation.
 13. If sampling strategies are utilized for functional performance testing of terminal equipment in non-lab associated spaces, then trend logging must be employed to demonstrate functional performance of all remaining terminal equipment. Note sampling strategies utilized for tests, inspections, or observations must be defined in the specifications, and pre-approved by the design consultant and the Owner's Commissioning Authority (CxA).
- G. In addition, the Commissioning Authority (CxA) services shall include the following, and note many of these tasks will include Commissioning Agent (CA) responsibilities:
1. Lead the Project Team and define roles and responsibilities related to commissioning;
 2. Identify and document systems requiring commissioning;
 3. Develop and provide a Design Phase Commissioning Plan;
 4. Assist in developing the Owner's Project Requirements (OPR);
 5. Review and comment on the OPR and the Basis of Design for LEED (BOD-L);
 6. Participate in design development, design progress meetings, and review Schematic Reports, 30% Schematic Design Drawings (SDs), 60% Design Development Drawings (DDs), 100% pre-bid Construction Drawings (CDs), and bid phase Construction Drawings (CDs), as well as separate final review of the BAS, all Sequences of Operation (SOO), and energy management plans.

7. Identify potential energy or operational efficiency opportunities during design phase;
8. Develop commissioning specifications and assist Design-Builder's Design Professional to adopt and coordinate complete contract documents that include all commissioning requirements and responsibilities;
9. Assist in the development of Indoor Air Quality (IAQ) specifications;
10. Revise the Design Phase Commissioning Plan at Construction Drawings (CD) phase and provide a Construction Phase Commissioning Plan that defines all commissioning responsibilities during construction phase;
11. Conduct commissioning team kickoff meeting and progress meetings during construction and turnover phases;
12. Review and approve Commissioning Agent (Cx) qualifications;
13. Review submittals and shop drawings for systems, equipment, and components requiring commissioning;
14. Review Commissioning Agent's (Cx) Indoor Air Quality (IAQ) management plan during construction, and provide Indoor Air Quality (IAQ) Management Report;
15. Upon approval of submittals, develop pre-functional testing procedures, including start-up and checkout, procedures and checklists.
16. Review and comment on the completeness and adequacy of the Testing, Adjusting & Balancing (TAB) Plan, and pressurization controls.
17. Conduct all site inspections as required, for example at rough-in, equipment and material delivery, static installations, pre-start-up readiness, pre-functional, functional performance stages, and distribute inspection findings reports.
18. Verify construction and installation of building systems, equipment and components (Pre-Functional Inspection Verifications), and document Pre-Functional Testing including start-up and checkout is completed. These services may include additional 3rd party oversight of controls, Building Automation System (BAS) work as applicable.
19. The Commissioning Authority (CxA) shall witness, document, and confirm or approve all the following:
 - a. Pipe flushing and testing, and associated procedures;
 - b. Duct cleaning and testing, and associated procedures;
 - c. Testing and calibration of the controls system before Testing Adjusting & Balancing (TAB);
 - d. Testing, Adjusting & Balancing (TAB) procedures and reports, and verify a minimum of 20% of the Testing Adjusting & Balancing (TAB) field measured data; 100% of systems that support the program needs of the ACL-3, BSL-2 & 3, Server Rooms, Clean Rooms, Vivariums, ABSL-3 spaces, and all associated lab and office program spaces as outlined in the Basis of Design (BOD), by performing their own measurements and submitting a Commissioning Authority (CxA) Testing Adjusting & Balancing (TAB) Verification Report;
20. Retrieve Certificate of Readiness from the Commissioning Agent (Cx) prior to Functional Performance Testing stating that start-up and checkout have been successfully completed and that all equipment, systems, and controls are complete and ready for functional performance testing.
21. Develop Functional Performance Testing Procedures and checklists.

22. Maintain a master log of deficiencies and resolutions, and formalize the deficiency resolution and closeout process with a “Deficiency Resolution Close Out Form” stating all deficiencies have been satisfactorily addressed and the Owner’s designated representatives accept the current state of all commissioned systems.
23. Witness, verify, document and approve Functional Performance Testing were performed and completed;
24. At a minimum, review, witness portions of, and document the following regarding Indoor Air Quality (IAQ) Testing (The intent is to meet applicable Indoor Air Quality (IAQ) testing requirements of both the Green Building Tax Credit (6 NYCRR 638.8) and current LEED standards.):
 - a. Indoor Air Quality (IAQ) Testing Protocol prior to Indoor Air Quality (IAQ) testing;
 - b. Confirm prerequisites such as construction completion and occupancy, building flush out, and as designed HVAC operation, prior to Indoor Air Quality (IAQ) testing;
 - c. Indoor Air Quality (IAQ) Testing Reports and confirm acceptable results;
25. Review the Operation and Maintenance (O&M) Manual(s) and comment on completeness and adequacy in accordance with the Owner’s Project Requirements (OPR) and contract documents. Submit Operation and Maintenance (O & M) Manual(s) for review comments to the Design Builder Commissioning Agent (Cx) for their review and direction.
26. Develop Systems & Energy Management Manuals;
27. Review and comment on completeness and adequacy of the Operation and Maintenance (O&M) training syllabus for commissioned systems.
28. Oversee the training of the owner’s Operation and Maintenance (O&M) personnel, and document written verification that training of operations and maintenance personnel was conducted for all commissioned features and systems.
29. Retrieve “System Certification” (as required and defined in current NYS Energy Code Section 103.2.2) from the applicable design professional and document in the final commissioning report.
30. Develop Final Commissioning Report;
31. Provide Statement of Certification of Work by the Commissioning Authority (CxA) confirming that all Commissioning Authority (CxA) scope items have been completed, documented, and are reflected in the Commissioning Report;
32. Verify, document and conduct off-season deferred testing;
33. Verify, document and conduct Post Occupancy Review;
34. Post Occupancy. Review shall take place within the two-year Project Warranty Callback Period, preferably after project deficiency close out, after deferred off-season testing, and after Commissioning Authority’s (CxA) Statement of Certification of Work with exception to the post occupancy work, and roughly between the six to ten-month mark in the Warranty Callback Period. The Post Occupancy Review shall include a pre-review and post review meeting that includes review and discussion of:
 - a. Final Commissioning Agent (Cx) Report;
 - b. Systems & Energy Manual and it’s use;
 - c. Operations and Maintenance (O & M) Manuals and their use;
 - d. Sequence of Operations (SOO);
 - e. Warranties, Service Contracts, and Computerized Maintenance Management System (CMMS) adequacy;

- f. Status of Operations and Maintenance (O & M) activity and documentation of organizational Operations and Maintenance (O&M) processes in use (i.e., Computerized Maintenance Management System (CMMS), etc.);
 - g. Condition and usefulness of “As-built” documents;
 - h. Systems and equipment to be reviewed, exercised, and confirmed to be in compliance with functional performance in accordance with the Owner’s Project Requirements (OPR) and Contract Documents (including Systems and Equipment (S&E), Operations and Maintenance (O&M), Sequences of Operation (SOO), etc.) ;
 - i. Provide Post Occupancy Review Report documenting all post occupancy review activities including any new deficiencies, resolutions, and recommendations;
35. Enhanced commissioning turn-over phase; Provide Monitoring Based Commissioning (MBCx) data analytics tools, reporting, and inspection service, to ensure consistent optimal efficiency, and energy management, for a period not less than three consecutive years, commencing upon final occupancy.
36. Provide written documentation denoting proof that the facility has been reviewed, tested and verified to meet all requirements of operating a facility with Tier 1 Agent use, CDC/USDA-APHIS Select Agent use and has auditable documentation of all systems within the specified spaces that can be reviewed by the CDC/USDA Inspectors.
37. The Commissioning Authority’s (CxA) services may include, but not be limited to services related to sustainability (including the USGBC LEED rating system), existing building commissioning, energy auditing, and Operations and Maintenance (O&M) support. The Commissioning Authority (CxA) may:
- a. Assist with development of LEED Checklists in design phase;
 - b. Provide LEED assessments as applicable;
 - c. Coordinate LEED activities with Owners, Design Team, and Contractors;
 - d. Manage the integrated LEED process as directed.
 - e. Provision of Operation & Maintenance (O&M) support services, including but not limited to: Assessment of organizational structure; Operation & Maintenance (O&M) process evaluations; Computerized Maintenance Management System evaluations and ongoing support; Review of staff responsibilities and technical expertise; Development of training manuals; Development of Equipment Standard Operating Policies and Procedures; Necessary Operation & Maintenance (O&M) equipment asset inventory assessment; Service contract assessment and management support, Development of, or assessment/management support for preventative maintenance programs, and transitional strategies and recommendations to ensure optimized performance; Equipment Use Permitting assistance; Inspection documentation; and remedial action oversight; Development and delivery of formal Operation & Maintenance (O&M) training programs to enhance staff knowledge base; Conduct facility condition assessments.
 - f. Provision for transitional services for Operation & Maintenance (O&M) and/or temporary operations services for on-site primary systems management for central heating, chilling, and mechanical/power plants, and related distribution systems including operations management, on-going analysis of energy consuming systems to identify opportunities for energy, cost, and energy-cost reductions by optimizing performance.
- 3.2 The Design-Builder shall coordinate with the Technical Advisor and the Commissioning Authority (CxA) for Commissioning Agent (CA) responsibilities, both by Designer(s) and Contractor(s) to achieve the successful commissioning of the project as determined by the Commissioning Authority (CxA) and New York State Department of Health.

END OF SECTION 019113

EXHIBIT C

TECHNICAL SPECIFICATIONS/SCOPE OF WORK

(To be developed and provided by Design-Builder for Owner review and approval.)

DRAFT

EXHIBIT D
MILESTONE DATES

(Design-Builder to provide proposed Milestone Dates for Owner review. Milestones listed below are proposals and Dates to be updated as part of Development of Baseline Schedule – need design Milestones.)

Item	Schedule Activity ID	Milestone Description	Milestone Date
1(*)		Notice to Proceed Issued (*)	(*)
2		Geotechnical Investigation Complete	
3		General Arrangement/Site Plan Drawings IFD	
4		Specifications for Major Equipment Issued for Order	
5		Mechanical System Designs Complete	
6		Scheduled Mobilization Date	
7		Site Mobilization (Site Work) Complete	
8		Piling/Caisson Plan Issued by Engineering for Bid	
9		All P&ID's Issued IBL (Issued for Building Layout)	
10		Underground Piping Design IFC (Issued for Construction)	
11		Site Erosion and Sedimentation Program Complete	
12		Completion of Base Construction Facilities/Mobilization (Piling/Elec/Piping Subs)	
13		Under Slab Mechanicals Complete	
14		Foundation Installation Complete	
15		Begin Structural Piling/Caissons	
16		Underground Duct Bank Design Issued for Construction	
17		Begin Structural Concrete	
18		Structural Steel Design IFC (Issued for Construction)	
19		Interior build-out drawings complete	
20		Completion of Piling/Caissons	
21		Delivery of [Major Equipment Item?]	
22		Delivery of [Major Equipment Item?] Components	
23		Delivery of [Major Equipment Item?]	
24		Begin Structural Steel Erection	
25		Completion of Major Equipment Foundations	
26		Installation of [Major Equipment Item?]	
27		Installation of [Major Equipment Item?]	
28		Installation of [Major Equipment Item?]	
29		Site Utilities Complete	

30		Completion of Main Building Structural Steel	
31		Completion of Weather-tight Enclosing of Main Building	
32		Interior Framing Complete	
33		Interior Framing Mechanical Rough-ins Complete	
34		Above Ceiling Mechanical Rough-Ins Complete	
35		Interior Drywall Complete	
36		Taping & Painting Complete	
37		Ceiling Installation Complete	
38		Millwork & Countertop Work Complete	
39		Finish Flooring Complete	
40		Mechanical Systems Complete	
41		Electrical Systems Complete	
42		Begin Commissioning Process	
43		Complete Successfully All Performance Testing	
44		TAO Certificate Issued	
45		Contractual Substantial Completion	
46		CCC Certificate Issued	
47		Final Completion	Substantial Completion +120 Days

Notes:

1. Schedule to be reviewed at NTP and adjusted upon mutual agreement
2. (*) Denotes Owner Controlled Date

EXHIBIT E

SCHEDULE OF VALUES

(To be developed and provided by Design-Builder for Owner review and approval.)

DRAFT

EXHIBIT F

PRELIMINARY COST ESTIMATE

(To be developed prior to Contract Execution)

DRAFT

EXHIBIT G
KEY PERSONNEL

Executive Sponsor

Design-Builder Representative

Project Manager

Assistant Project Manager

Site Construction Manager

General Superintendents

Project Architects/Engineers (list by Discipline)

Safety Manager(s)

Lead Project Controls Manager

Lead Scheduler

Lead Cost Engineer

Site Materials Manager

Site Subcontract Manager

Environmental Manager

QA/QC Manager

Commissioning Agent

EXHIBIT H

FORM OF MONTHLY PROGRESS REPORTS

Each Monthly Progress Report, at a minimum, must cover all of the following subject matters:

Table of Contents

Section 1	Executive Summary Project Directory, including current Team contact information
Section 2	Overall Project Status Major Milestones achieved Percentage of completion for the Project Project status narrative Encountered problems in this period or anticipated problems in upcoming periods Results of prior improvement actions undertaken Areas for future improvement Copies of all meeting minutes from the prior month
Section 3	Safety and Environmental Compliance Health and Safety Reporting highlights List of safety related incidents Lost man hours due to accidents and a report related to such accidents List of initiatives or investigations undertaken in this period List of findings or penalties imposed in this period Planned Goals and Accomplishments/compliance Compliance with Environmental regulations
Section 4	Quality Control and Quality Assurance A summary statement as to the status of quality control/inspections for the Project including, but not limited to, number and type of inspections made, overall project quality to date, and recommendations

Log of investigations, observations, open items, closed items

Non-Conformance or Non-Compliance identified, open or closed in period, including corrective actions

Resolution and corrective actions taken in period

Section 5

Schedule

Current Executive Summary Schedule, Project Summary Schedule, and Interim Project Schedule or Project Schedule, as the case may be

Contract and Owner's Standard Milestones planned and achieved

Schedule status oversight – Current Critical Path and Near Critical Paths within fifteen (15) Business Days

Comparison of the current Interim Project Schedule Update or the Project Schedule Update to prior period Interim Project Schedule or the Project Schedule, as the case may be, status identifying all variances

Summary comparison of current Interim Project Schedule or the Project Schedule, as the case may be, to Baseline Project Schedule

Upcoming Work Summary: Prepare summary report indicating activities scheduled to occur or commence prior to submittal of next Interim Project Schedule or Project Schedule update, as the case may be. Summarize the following issues:

Unresolved issues.

Unanswered RFIs.

Rejected or unreturned submittals.

Notations on returned submittals.

Known or suspected problem areas which has or may affect current Project Schedule

Recovery and Mitigation Plans, including any schedules

The status and effect of any Shop Drawings, Submittals, RFIs, Proposed Change Orders, or approved Change Orders on the Project, proposed uses of Design-Builder Contingency, the Project Schedule, inclusive of items requiring the Owner's immediate attention

Section 6

Design Status

Deliverables status, including accomplishments and forecast for next period

Actual accomplishments from and compared to the prior period forecasts showing all variances

Staffing Plan comparison to Actual Staffing

RFI and PCO Status

Problems, challenges, concerns and mitigations

Section 7

Procurement Status

List of P.O.s/Sub-subcontracts issued

List of Subcontracts/Sub-subcontracts to be submitted for Owner Review

Status of major Material purchases (Expediting Report)

Status of Major Subcontracts/Sub-subcontracts Actual accomplishments from and compared to the prior period forecasts showing all variances

Buy-out savings status report

Supplier Inspections

W/MBE/SDVOB Reports

Competitive Bidding – ALL BID SUBCONTRACTS

Pre-bid conferences

Bid Packages

Bid Openings

De-scoping meetings

Letters of Recommendation

Problems, challenges, concerns and mitigations

Section 8

Construction Status

Major accomplishments this period and planned major accomplishments for next reporting period

Actual accomplishments juxtaposed to the prior period forecasts showing all variances

Monthly Summary of Field Quantity Installation Report

Materials

Received at Site

Installed

Storage area conditions report

Shortages, deficiencies, and problems

Subcontractors

Active at Site

New Mobilization

Demobilized

Problems and concerns

Craft labor by trade and contractor
Major equipment mobilization, demobilization, usage and utilization
(hours of use)
Labor relations
Problems, challenges, concerns, and mitigations

Section 9 Financial Summary:

Overall summary of the financial status of the Project with the cost control report

Actual and projected costs of Project

Variances between actual costs and budget

Design-Builder's and its Subcontractors' approved reports highlighting Design-Builder's productivity, quantity installation and man hour expenditures as compared to the Project budget per the approved current Baseline Schedule.

Contingency summary report

A summary statement as to the status of change orders for the Project inclusive of potential change orders, approved change order and rejected / voided change orders as well as change orders which require the Owner's immediate attention

Current cost issues with proposed solutions for resolution

Design-Builder Forecast and Trends.

Payment Invoicing and Accruals Status

Recommendations

Section 10 Permitting Status and compliance

Section 11 Risk:

Current Risk/Opportunity Register

Narrative explaining the current high, medium and low risk and associated cost

Risk mitigation efforts and plans

Section 12 Progress Photos:

Individual photos depicting key events, progress, and areas on a

monthly basis

Standard Progress Photos taken from a pre-selected 10 to 12 locations used throughout the project duration or as directed by Owner.

Section 13

Attachments:

Monthly Cost Report
Monthly Cash Flow Forecast and Graph
Monthly Progress Report by discipline and area
Monthly Field Quantity Installation Report
Executive Schedule Planned and Current comparison
Project Summary Schedule Planned and Current comparison
Interim Project Schedule or Project Schedule Planned, as the case may be,
and Current comparison
A 30-Day and 60-Day look-ahead schedule
Change Order Log and Contingency Log
Other Logs for Submittals, Notices, RFIs, Issues, NCRs, and update on
Payment Requisitions
Risk / Opportunity Register

EXHIBIT I

PERFORMANCE GUARANTEES

(DASNY to discuss with Design-Builder prior to contract execution)

DRAFT

EXHIBIT J

DRUG AND ALCOHOL SUBSTANCE ABUSE SCREENING POLICY AND PROCEDURE

(Design-Builder to provide compliant program)

DRAFT

EXHIBIT K

CAMERA USAGE GUIDELINE

INCLUDED IN THIS GUIDELINE

1. Purpose
2. Applicability
3. Definitions
4. Responsibilities
5. Requirements
6. Exemptions
7. Camera Permit

1. PURPOSE

This Camera Usage Guideline (“Guideline”) defines the steps related to images, videos and other recorded photography taken of/at the Site. It addresses when Images may be taken, who may have access to them, and how they may be reviewed.

2. APPLICABILITY

This Guideline applies to the Design-Builder, Subcontractors, and Site visitors.

3. DEFINITIONS

3.1 Camera – Any device used to capture images either digitally, on tape, or on film and having a self-contained on board, on site, or off-site storage capability. This includes devices such as, but not limited to, standard still or motion cameras, palm pilots, i-Pads, electronic tablets, pens, cellular or related telephones containing cameras, internet protocol type cameras and devices, and wearable camera devices such as “Google Glass” and other miniature cameras.

3.2 Image(s) – Any picture, video, or other recorded photography taken at the Site.

3.3 Security-Related Areas – Any security boundary or structure (e.g., fence lines, vehicle barriers, etc.) security card reader doors or portals, security cameras and lighting, or any location or structure associated with security defense or access control positions.

4. RESPONSIBILITIES

4.1 Design-Builder, Subcontractors, and Site visitors are responsible for the following:

4.1.1 Following the guidance noted within this guideline.

4.1.2 Self-declaring all Image capable devices or Cameras prior to bringing them on-Site.

4.1.2.1 Failure to self-declare an Image capable device or Camera as required may result in the device being confiscated and having any future Site access denied to the particular Person.

4.1.2.1.1 Personal cell phones that are capable of taking Images are exempt from the self-declaration requirement, unless it can be shown that this guideline is being abused and cell phones are being used in an unauthorized manner.

4.1.3 Questioning any individual observed capturing Images on Site, requesting to see a valid Camera Permit, or determining if the individual meets an exemption status.

4.1.3.1 Reporting to Owner any non-cooperative individuals.

4.1.4 Realizing that during emergency events, management personnel may need to quickly photograph certain areas of concern prior to exiting, so that the Images can be used to prepare for job and recovery briefings.

4.1.4.1 Such observations should be reported to Owner so that proper follow-up inquiries can be made.

5. REQUIREMENTS

5.1 Owner strictly prohibits the use of Cameras at the Site unless:

5.1.1 The Design-Builder has submitted a Camera Permit request that has been approved by the Owner.

5.1.2 The use falls under an allowable exemption in Section 6 of this Exhibit.

5.2 If available, the date and time stamp option, such as is available on digital camera equipment, should be used when taking Images.

5.3 Images shall not be taken of Security Related Areas unless approved in advance and in writing by the Owner's Representative.

5.4 Should any Images indicate an actual or potential safety concern or violation, such Image must be forwarded to the Owner's Representative or Owner's Project Manager. The Owner's Representative or Owner's Project Manager will forward the Image to the Owner's Safety Department for additional follow-up.

5.4.1 The Owner's Safety Department may retain and/or return the Image(s) following its investigation.

5.4.1.1 Images containing confirmed safety violations will not be allowed for distribution outside of the Parties without prior written approval of Owner.

5.5 Images should be taken for purposes of the documenting and completing the Work but shall not be used for commercial purposes such as advertising or marketing without the prior written approval of Owner.

5.6 Owner reserves the right to review, audit, retain, and/or confiscate any Images taken at the Site.

6. EXEMPTIONS

The following is a list of exempted personnel or devices to this Guideline:

6.1 Employees of Owner and other parties authorized by Owner.

6.2 Any Image recording device/media that is part of a temporary or permanently installed Owner's Physical Security System, and any Image recording device/media that is being used by an authorized individual of the Owner in pursuit of their official duties.

6.3 Construction video cameras mounted to specifically monitor and record the Work. However, such video cameras:

6.3.1 Must record to an on-site video recorder accessible to Owner.

6.3.2 Will not be allowed to remotely transmit any images off-Site unless approved in writing in advance by Owner.

6.4 Other exemptions may be authorized in writing by the Owner's Representative or Owner's Project Manager or designee.

**7. CAMERA PERMIT
LIFE SCIENCES PUBLIC HEALTH LABORATORY PROJECT**

The use of Cameras, as defined in Section 3.1 of the Camera Usage Guideline (the “Guideline”), will be controlled at the Owner’s Life Sciences Public Health Laboratory construction Site. Owner prohibits the use of all Camera-related devices capable of capturing and/or transmitting Images unless a Camera Permit has been issued. The Camera Permit must identify the specific need to use a Camera and the designated locations for which the person issued the Camera Permit is authorized to take photographs and/or videos.

Date of Issuance:		Time of Issuance:	
Project Manager/Designee Issuing Permit – Name:			
Permit Type:	Temporary – Single Day:		
	Permanent by Exception:		
	Other – Please Describe:		

Permit Issued To:	Name:	
	Company:	
	Department:	

Description of Photography/Video/Images to be Taken:	
Owner Signature – Authorizing Individual:	
Sequential Permit Number:	

The undersigned hereby acknowledges that the undersigned has received a copy of and read Owner’s Camera Usage Guideline and agrees to abide by the terms of the Guideline. The undersigned understands and agrees that deviating from this Guideline may be grounds for confiscation of the Camera or the Images, removal from the Site, and/or the deletion or destruction of any unauthorized Image or the Camera. The undersigned agrees to indemnify, hold harmless, and upon request, defend Owner, from any claim, liability, damage, expenses, suits, demands or costs (including, without limitation, reasonable attorney’s fees and costs) for actual or alleged violation by the undersigned of the Guideline, arising out of or in any manner related to, based upon, or in connection with any use by the undersigned of Camera or to the recording media at or related to the construction site.

Signature:		Date:	
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EXHIBIT L

FORM OF DAILY SHIFT REPORT

DAILY SHIFT REPORT		DATE: _____	
PROJECT:		REV #: _____	
DESIGN-BUILDER:		REPORT #: _____	
WEATHER			
	Morning (9:00am)		Afternoon (2:00PM)
CONDITIONS:	_____		_____
TEMPERATURE:	_____ °F		_____ °F
HUMIDITY:	_____ %		_____ %
SNOWFALL:	_____ in.		_____ in.
RAINFALL:	_____ in.		_____ in.
WINDSPEED:	_____ mph		_____ mph
SAFETY			
LOST TIME INCIDENT/ACCIDENT?	YES	<input type="checkbox"/>	
	NO	<input type="checkbox"/>	
IF "YES" DESCRIBE BRIEFLY:	_____ _____		
IF "YES" RESPONSE ACTIONS:	_____ _____ _____		
VISITS BY NON-PROJECT PERSONNEL			
Name of Visitor(s):	_____ _____		
Company or Organization:	_____ _____		
Purpose of Visit:	_____ _____		
WORK IN PROGRESS			
BRIEF DESCRIPTION OF WORK IN PROGRESS:	_____ _____ _____ _____		
DELAYS/INTERRUPTIONS TO WORK:	_____ _____		
MATERIAL DELIVERIES:	_____ _____		
DESIGN-BUILDER SIGNATURE: _____			
OWNER COMMENTS: _____ _____ _____			
OWNER SIGNATURE: _____			

DAILY SHIFT REPORT											DATE: _____
PROJECT:											REV #: _____
DESIGN-BUILDER:											REPORT #: _____
WORK FORCE	Gen. Foremen		Foremen		Journeymen		Apprentice		Total		Hours
DIRECT LABOR	Working	Absent	Working	Absent	Working	Absent	Working	Absent	Working	Absent	Worked
Carpenters											
Laborers											
Teamsters											
Ironworkers											
Pipefitters											
Plumbers											
Boilermakers											
Operating Engineers											
Oilers											
Insulators											
Instrument Fitters											
Electricians											
Other(List):											
INDIRECT LABOR	Working	Absent	Hrs. Worked		EQUIPMENT		Total #	EQUIPMENT		Total #	
Project Manager					Dozer			List Other:			
Cost Control					Grader						
Cost Control					Backhoe						
Scheduler					Excavator						
Field Engineer					Loader						
Quality Control					Cranes						
HSE Officer					JLG						
Document Control					Air Compressor						
Time Keeper					Forklifts						
Civil Superintendent					Compactors						
Structural Superintendent					Pick-Up Trucks						
Mechanical Superintendent					Diesel Pump						
Electrical Superintendent					Trailers						
Instrument Superintendent					Dump Truck						
Insulation Superintendent					Gas / Oil Truck						
Other Supervision (list)					Water Truck						
					Bus						
					Transport Truck						
					Platform Truck						
					Welding Machine						
					Bending Machines						
					Concrete Mixer						
					Concrete Pump Truck						
										Page 2 of 2	

EXHIBIT M
PAYMENT DOCUMENTATION

DRAFT

DESIGN BUILDER'S WAIVER OF LIEN TO DATE

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

Project Name _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has contracted with (2) _____, the Owner, to furnish (3) _____ for the premises known as (4) _____.

The undersigned, for and in consideration of (5) _____ Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of New York, relating to liens of mechanics, laborers and materialmen, with respect to and upon the foregoing described property, and the improvements thereon, and with respect to any statutory lien bond, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the Owner, on account of labor, services, material, fixtures, apparatus or machinery furnished to this date by the undersigned for the foregoing described property.

_____ day of _____, 20____

Signature: _____
 Title: _____

DESIGN BUILDER'S AFFIDAVIT

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that it has contracted with (2) _____, the Owner, for the premises known as (4) _____. That the total Contract Sum including Change Orders is (7) \$_____ on which it has received payment of (8) \$_____ for payment applications (9) _____ to _____ prior to payment. That all waivers submitted are true, correct and genuine and delivered unconditionally, and that there is no claim either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES (include undersigned's portion of contract) Attach additional pages if necessary	TYPE OF WORK	CONTRACT SUM	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL	(Undersigned MUST complete this line)	(7)	(8)	(9)	(10)

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this ___ day of _____, 20____

Signature: _____

Subscribed and sworn to before me this ___ day of _____, 20____

- (1) Insert names of state and county where waiver is executed.
- (2) Insert name of party who hired you (the Owner).
- (3) Describe what was furnished, e.g., carpentry, plumbing, etc.
- (4) Provide location of project by legal description and/or common address if known.
- (5) Insert amount of the previous application for payment.
- (6) Insert name of state where project is located.
- (7) Insert Contract Sum including extras.
- (8) Insert total amount of prior payments.
- (9) Insert prior payment application numbers which have been paid.
- (10) "Balance Due" plus amounts entered in the "Amount Paid" and "This Payment" columns must equal "Contract Sum" including extras.

DESIGN-BUILDER'S FINAL WAIVER OF LIEN

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

Project Name _____

TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned has contracted with (2) _____, the Owner, to furnish (3) _____ for the premises known as (4) _____.

The undersigned, for and in consideration of (5) _____ Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of New York, relating to liens of mechanics, laborers and materialmen with respect to and upon the foregoing described property, and the improvements thereon, and with respect to any statutory lien bond, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the Owner, on account of labor, services, material, fixtures, apparatus or machinery heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the foregoing described property.

_____ day of _____, 20____

Signature: _____
 Title: _____

DESIGN-BUILDER'S AFFIDAVIT

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that it has contracted with (2) _____, the Owner, for the premises known as (4) _____. That the total Contract Sum including Change Orders is (7) \$ _____ on which it has received payment of (8) \$ _____ for payment applications (9) ____ to ____ prior to this payment. That all waivers submitted are true, correct and genuine and delivered unconditionally, and that there is no claim, either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES (include undersigned's portion of contract) Attach additional pages if necessary	TYPE OF WORK	CONTRACT SUM	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL	(Undersigned MUST complete this line)	(7)	(8)	(9)	(10)

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this ___ day of _____, 20____

Signature: _____

Subscribed and sworn to before me this ___ day of _____, 20____

- (1) Insert names of state and county where waiver is executed.
- (2) Insert name of party who hired you (the Owner).
- (3) Describe what was furnished, e.g., carpentry, plumbing, etc.
- (4) Provide location of project by legal description and/or common address if known.
- (5) Insert amount of this payment.
- (6) Insert name of state where project is located.
- (7) Insert Contract Sum including extras.
- (8) Insert total amount of prior payments.
- (9) Insert prior payment application numbers which have been paid.
- (10) Insert zero.

CONTRACTOR'S WAIVER OF LIEN TO DATE

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

Project Name _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has contracted with (2) _____, (Design-Builder or other contractor), to furnish (3) _____ for the premises known as (4) _____.

The undersigned, for and in consideration of (5) _____ Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of New York, relating to liens of mechanics, laborers and materialmen, with respect to and upon the foregoing described property, and the improvements thereon, and with respect to any statutory lien bond, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the (2) _____ (Design-Builder or other contractor), on account of labor, services, material, fixtures, apparatus or machinery furnished to this date by the undersigned for the foregoing described property.

_____ day of _____, 20____

Signature: _____
 Title: _____

CONTRACTOR'S AFFIDAVIT

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that it has contracted with (2) _____, (Design-Builder or other contractor) for the premises known as (4) _____. That the total Contract Sum including Change Orders is (7) \$ _____ on which it has received payment of (8) \$ _____ for payment applications (9) _____ to _____ prior to payment. That all waivers submitted are true, correct and genuine and delivered unconditionally, and that there is no claim either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES <small>(include undersigned's portion of contract) Attach additional pages if necessary</small>	TYPE OF WORK	CONTRACT SUM	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL <small>(Undersigned MUST complete this line)</small>		(7)	(8)	(9)	(10)

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this ___ day of _____, 20____

Signature: _____

Subscribed and sworn to before me this ___ day of _____, 20____

- (1) Insert names of state and county where waiver is executed.
- (2) Insert name of party who hired you (Design-Builder or other contractor).
- (3) Describe what was furnished, e.g., carpentry, plumbing, etc.
- (4) Provide location of project by legal description and/or common address if known.
- (5) Insert amount of the previous application for payment.
- (6) Insert name of state where project is located.
- (7) Insert Contract Sum including extras.
- (8) Insert total amount of prior payments.
- (9) Insert prior payment application numbers which have been paid.
- (10) "Balance Due" plus amounts entered in the "Amount Paid" and "This Payment" columns must equal "Contract Sum" including extras.

CONTRACTOR'S FINAL WAIVER OF LIEN

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

Project Name _____

TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned has contracted with (2) _____, (Design-Builder or other contractor) to furnish (3) _____ for the premises known as (4) _____.

The undersigned, for and in consideration of (5) _____ Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of New York, relating to liens of mechanics, laborers and materialmen with respect to and upon the foregoing described property, and the improvements thereon, and with respect to any statutory lien bond, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the (2) _____ (Design-Builder or other contractor), on account of labor, services, material, fixtures, apparatus or machinery heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the foregoing described property.

_____ day of _____, 20____

Signature: _____
 Title: _____

CONTRACTOR'S AFFIDAVIT

STATE OF (1) _____)
) SS
 COUNTY OF (1) _____)

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that it has contracted with (2) _____, the Contractor (or Owner) for the premises known as (4) _____. That the total Contract Sum including Change Orders is (7) \$_____ on which it has received payment of (8) \$_____ for payment applications (9) ____ to ____ prior to this payment. That all waivers submitted are true, correct and genuine and delivered unconditionally, and that there is no claim, either legal or equitable, to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES (include undersigned's portion of contract) Attach additional pages if necessary	TYPE OF WORK	CONTRACT SUM	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL	(Undersigned MUST complete this line)	(7)	(8)	(9)	(10)

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this _____ day of _____, 20____

Signature: _____

Subscribed and sworn to before me this _____ day of _____, 20____

- (1) Insert names of state and county where waiver is executed.
- (2) Insert name of party who hired you.
- (3) Describe what was furnished, e.g., carpentry, plumbing, etc.
- (4) Provide location of project by legal description and/or common address if known.
- (5) Insert amount of this payment.
- (6) Insert name of state where project is located.
- (7) Insert Contract Sum including extras.
- (8) Insert total amount of prior payments.
- (9) Insert prior payment application numbers which have been paid.
- (10) Insert zero.

EXHIBIT N

SITE SECURITY REQUIREMENTS

(To be provided by Design-Builder)

DRAFT

EXHIBIT O

NEW YORK STATE LIFE SCIENCES PUBLIC HEALTH LABORATORY BASIS OF DESIGN

(Full version to be provided with RFP)

DRAFT

EXHIBIT P

RATE SCHEDULE (TIME AND MATERIAL)

(To be provided by Design-Builder)

DRAFT

EXHIBIT Q

FORM OF PERFORMANCE AND PAYMENT BONDS

CONTRACT FORMS for CONSTRUCTION

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we

_____, as Principal (the
“Design Builder”)

(Legal title of the Design-Builder)

(Street, City, State, Zip Code)

and _____, as Surety

(Legal title of the Surety)

(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority, 515 Broadway, Albany, New York 12207, as Obligee, hereinafter called the Owner, for the use and benefit of the claimants as herein below defined, in the amount of:

WHEREAS, DESIGN-BUILDER, has by written Agreement dated _____

entered into a Contract with the Owner for:

(Title of Project)

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise such obligation shall remain in full force and effect, subject, however, to the following conditions:

- A. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- B. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials

were furnished by such claimant, may sue on this Payment Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

- C. No suit or action shall be commenced hereunder by any claimant:
1. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal above named, within one hundred twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where the Principal maintains an office or regularly conducts the Principal's business, or at Principal's residence or served on Principal in any manner in which legal process may be served in the State of New York.
 2. Except as provided in section 220-g of the New York State Labor Law, after the expiration of one (1) year following the date on which the public improvement has been Completed and Accepted by the Owner; however, if any limitation embodied in this Payment Bond is prohibited by any Law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such Law.
 3. Other than in a New York State court of competent jurisdiction in and for the county in which the Contract, or any part thereof, was to be performed, or in the United States District Court for the district in which the Contract, or any part thereof, was to be performed, and not elsewhere.
- D. The penal sum of this Payment Bond is in addition to any other bond furnished by the Design-Builder and in no way shall be impaired or affected by any other bond.
- E. The amount of this Payment Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Signed this ____ day of _____, 20__

IN THE PRESENCE OF:

(Principal)

(Surety)

(Signature)

(Signature)

(Title)

(Title)

(Street Address)

(Street Address)

(City, State, Zip Code)

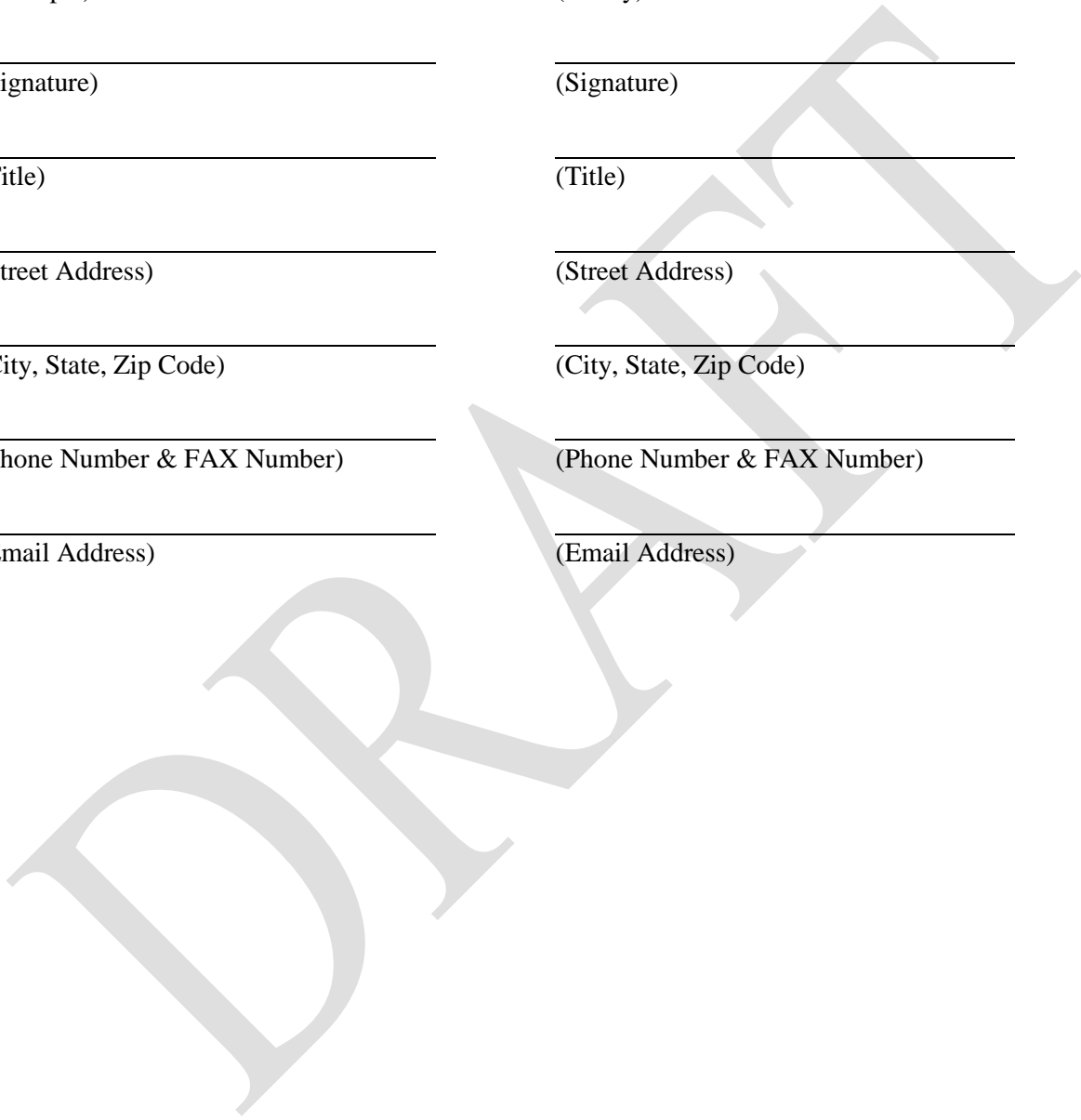
(City, State, Zip Code)

(Phone Number & FAX Number)

(Phone Number & FAX Number)

(Email Address)

(Email Address)



**ACKNOWLEDGMENT OF DESIGN-BUILDER EXECUTING PAYMENT BOND
IF A CORPORATION**

STATE OF _____

COUNTY OF _____

On the ____ day of _____ in the year 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at: _____

(street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

**ACKNOWLEDGMENT OF DESIGN-BUILDER EXECUTING PAYMENT BOND
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL**

STATE OF _____

COUNTY OF _____

On the ____ day of _____ in the year 20____, before, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known 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 such the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGMENT OF SURETY

STATE OF _____

COUNTY OF _____

On the ___ day of _____ in the year 20____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she/resides at:

(street, city, state, zip code)

That he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

CONTRACT FORMS for CONSTRUCTION

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we

_____, as Principal
(Legal title of the Design-Builder)

(Street, City, State, Zip Code)

and _____, as Surety
(Legal title of the Surety)

(Street, City, State, Zip Code)

are held and firmly bound unto the Dormitory Authority, 515 Broadway, Albany, New York 12207, as Obligee, hereafter called the Owner, in the amount of:

(Written Dollar Amount)

(Figure Dollar Amount)

for the payment whereof Design-Builder and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, DESIGN-BUILDER, has by written agreement dated _____ entered into a Contract with the Owner for:

(Title of Project)

in accordance with the Contract Documents and any changes thereto, which are made a part hereof, and are hereinafter referred to as the Contract.

- A. If the Design-Builder well and fully performs the Contract, the Surety and the Design-Builder shall have no obligation under this Performance Bond, except to participate in conferences as provided in paragraph B1.
- B. If there is no Owner Default, the Surety's obligation under this Performance Bond shall arise after:
 - 1. The Owner has notified the Design-Builder and Surety that the Owner is considering declaring a Design-Builder Default; and
 - 2. The Owner has declared a Design-Builder Default.

- C. When the Owner has satisfied the conditions of paragraph B, the Surety shall, at the Owner's option, and at the Surety's expense take one the following actions within twenty (20) days after written notice is sent by the Owner to the Surety declaring a Design-Builder Default:
1. Arrange for the Design-Builder, with consent of the Owner, to perform and complete the Contract.
 2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors.
 3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Payment Bond and Performance Bond issued on the Contract, with a contract price between the Owner and contractor equal to the Balance of the Contract Price, and pay to the Owner the amount of damages as described in paragraph E in excess of the Balance of the Contract Price incurred by the Owner resulting from the Design-Builder Default.
 4. Tender to the Owner the amount of this Performance Bond.
- D. If the Surety does not proceed within the time prescribed in paragraph C, the Surety shall be deemed to be in default on this Performance Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.
- E. After the Owner has declared a Design-Builder Default, and when the Surety acts under paragraph C1, C2, or C3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Design-Builder under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. When the Surety acts under paragraph C1, C2 or C3 above, the Owner will agree to pay the Balance of the Contract Price to the Surety in accordance with and subject to the terms of the Contract or to a contractor selected to perform and complete the Contract in accordance with and subject to the terms of the contract between the Owner and contractor. When the Surety acts under paragraph C1 or C2 above, the Surety's obligation to perform and complete the Contract is not limited by the amount of this Performance Bond and the Balance of the Contract Price. When the Surety acts under paragraph C1, C2 or C3 above or fails to act under paragraph C, the Surety, in addition to its other obligations, is obligated without duplication for:
1. Additional legal, design professional, consultant and delay costs resulting from the Design-Builder Default, or resulting from the actions or failure to act of the Surety under paragraph C.
 2. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages for loss of beneficial use of the Work caused by delayed performance or non-performance of the Design-Builder.
- F. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Performance Bond to any person or entity other than the Owner or its successors or assigns.
- G. This Performance Bond and the Surety's obligations shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the Contract or the Work to be performed thereunder, or by the payment thereunder before the time required therein, or by any waiver of any provision or condition precedent or subsequent thereof, or by settlement or compromise of any claim or dispute related there to, or by assignment, subcontract or other transfer of the Work or any part thereof, or of any monies due or to become due thereunder; and the Surety hereby waives notice of any and all

such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers.

- H. Any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to the Surety as though done or omitted to be done by or in relation to the Principal.
- I. The obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other rearrangement of the Principal for the benefit of creditors.
- J. The Owner's acceptance of this Performance Bond shall in no way, for any purpose, limit or be claimed to limit the liability of the Principal under the Contract, but such liability shall remain in all respects to the same extent as is provided for in the Contract.
- K. Notice to the Surety and the Design-Builder shall be mailed or delivered to the address shown on the signature page. Notice to the Owner shall be mailed or delivered to the address shown in the preamble.
- L. Definitions:
1. **Balance of the Contract Price** - The total amount payable by the Owner to the Design-Builder under the Contract after all proper adjustments (increases and reductions) allowed by the Contract have been made, including, but not limited to, allowance to the Design-Builder of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Design-Builder is entitled, reduced by all valid and proper payments made to or on behalf of the Design-Builder under the Contract.
 2. **Contract** - The agreement between the Owner and the Design-Builder identified on the signature page, including all Contract Documents as defined in the General Conditions of the Contract and all changes, modifications, amendments, additions, and alterations thereto after the date of this Performance Bond.
 3. **Design-Builder Default** - Failure of the Design-Builder, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 4. **Owner Default** - Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Contract or to perform and complete or comply with the other material terms thereof.
- M. The penal sum of this Performance Bond is in addition to any other bond furnished by the Design-Builder and in no way shall be impaired or affected by any other bond.
- N. Any suit under this Performance Bond must be instituted before the expiration of two (2) years from the date on which Final Payment is made under this Contract.

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Signed as of this ____ day of _____, 20__

IN THE PRESENCE OF:

(Principal)

(Surety)

(Signature)

(Signature)

(Title)

(Title)

(Street Address)

(Street Address)

(City, State, Zip Code)

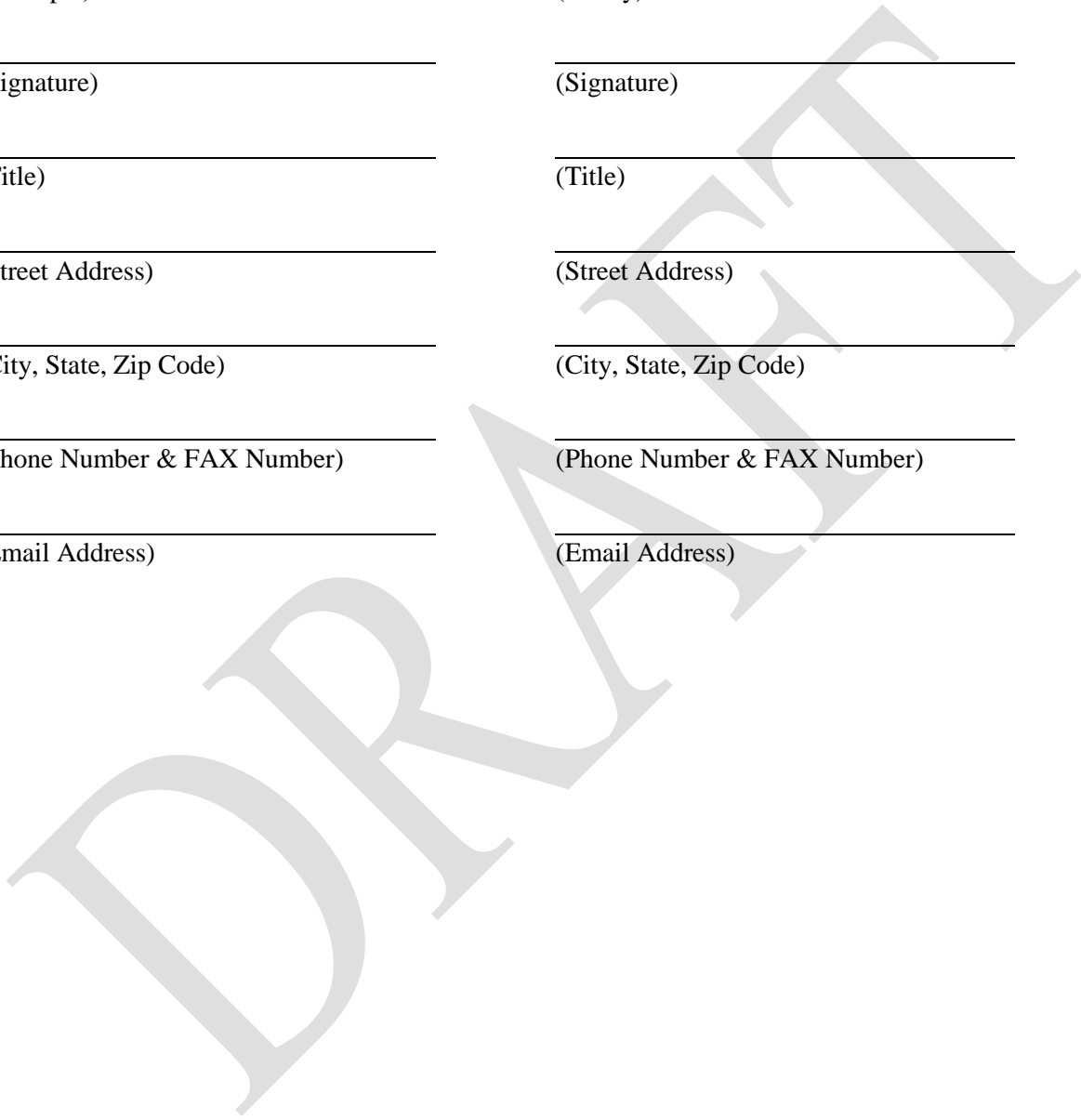
(City, State, Zip Code)

(Phone Number & FAX Number)

(Phone Number & FAX Number)

(Email Address)

(Email Address)



**ACKNOWLEDGMENT OF DESIGN-BUILDER EXECUTING PERFORMANCE BOND
IF A CORPORATION**

STATE OF _____

COUNTY OF _____

On the ____ day of _____ in the year 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides at: _____

(street, city, state, zip code)

that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

**ACKNOWLEDGMENT OF DESIGN-BUILDER EXECUTING PERFORMANCE BOND
IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL**

STATE OF _____

COUNTY OF _____

On the __ day of _____ in the year 20____, before, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known 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 such the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGMENT OF SURETY

STATE OF _____

COUNTY OF _____

On the ____ day of _____ in the year 20____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she/resides at:

(street, city, state, zip code)

That he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

Notary Public

EXHIBIT R

SUBMITTALS

(To be developed prior to Contract Execution)

DRAFT

EXHIBIT S

Not Used

DRAFT

EXHIBIT T

DESIGN-BUILDER'S QA/QC PROGRAM

(Design-Builder to supply compliant program)

DRAFT

EXHIBIT U

DESIGN-BUILDER'S SAFETY AND LOSS CONTROL PROGRAM

(Design-Builder to supply compliant program)

DRAFT

EXHIBIT V

FORM OF APPLICATION FOR PAYMENT

Application for Payment								
Contractor:	Pay To:	Application No:						
Contract:		Application Date:						
Project:		Period Ending:						
<ol style="list-style-type: none"> 1. Original Contract Sum 2. Net Change by Change Orders 3. Contract Sum to Date (Line 1 + Line 2) 4. Total Completed & Stored to Date (Column J on Detail Sheet) 5. Retainage 6. Total Earned Less Retained (Line 4 less Line 5) 7. Less Previous Certificates for Payment 8. Current Payment Due (Line 6 less Line 7) <input style="width: 50px;" type="text"/> 9. Balance to Finish, Including Retainage (Line 3 less Line 6) 	<p>Certification of the Contractor</p> <p>I hereby certify, on behalf of that: (i) the work performed, and the materials supplied to date, as shown on the above, represent the actual value of accomplishment under the terms of the Contract (and all authorized changes thereto) between the undersigned and DORMITORY AUTHORITY OF STATE OF NEW YORK relating to the above referenced project; (ii) the information submitted through the New York State Contract System regarding MBE/WBE/SDVOB participation on the contract is true and accurate; (iii) the MBE/WBE/SDVOB subcontractors and vendors listed submitted through the New York State Contract System have performed a commercially useful function on the project and have not, other than as allowed in the approved Utilization Plan, subcontracted their assigned scope of work to a non-MBE/WBE/SDVOB entity; and (iv) the noted firm is in compliance with the approved Utilization Plan for the contract.</p> <p>To the extent that certified payroll records are required to be submitted in accordance with NYS Labor Law, (i) I pay or supervise the payment of laborers, workers and mechanics employed by the noted firm, and all laborers, workers and mechanics were paid wages and supplements recorded as earned on the attached payroll records, and no deductions have been made either directly or indirectly from wages and supplements other than deductions shown on payroll records; (ii) payroll records submitted and attached hereto are correct and complete, and wage rates for laborers, workers and mechanics contained therein are not less than applicable wage rates stated in the contract and as designed by the NYS Department of Labor; (iii) the number of hours shown for each employee reflects actual hours worked by that employee; (iv) the classification shown for each employee is accurate and conforms to the work he or she performed; and (v) supplements required in the contract that are in addition to basic hourly wages have been or will be paid to the appropriate plans, funds or programs.</p> <p>For all contracts advertised on or after 7/18/08 and valued over \$250,000.00, that all laborers, workers and mechanics working on site are certified as having successfully completed the OSHA 10-hour Construction Safety and Health Course- S1537-A and have furnished a copy of proof of completion of the OSHA 10 course, as of the first certified payroll submitted and on each succeeding payroll where any new or additional employee is first listed; and the contractor is in compliance with NYS Environmental Law section 19-0323, and the rules and regulations promulgated thereunder, as administered by the NYS Department of Environmental Conservation.</p> <p><i>Facsimile signatures shall constitute original signatures for purposes of this Application for Payment</i></p>							
<p>Attachments / Information Provided by Contractor</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Prime Certified Payroll Included</td> <td style="width: 20%;">Yes</td> <td style="width: 20%;">N/A</td> </tr> <tr> <td>Sub Certified Payroll and Cert Form Included</td> <td>Yes</td> <td>N/A</td> </tr> </table> <p>Other:</p> <p>MWBE Compliance on Total Contract / Goal /</p>	Prime Certified Payroll Included	Yes	N/A	Sub Certified Payroll and Cert Form Included	Yes	N/A	<p>DASNY Project Manager Approval</p> <p>Date: _____</p> <p>By: _____</p>	
Prime Certified Payroll Included	Yes	N/A						
Sub Certified Payroll and Cert Form Included	Yes	N/A						
<p>Notes:</p>	<p>Date: _____</p> <p>By: _____ (Authorized Signature)</p> <p>Title: _____ (Corporate Title)</p>							
<p>Batch: Voucher: Integration:</p>								
<p align="right">NOTARY PUBLIC: _____</p> <p align="right">Subscribed and sworn to me this _____ day of _____, 20__ In the State of _____</p> <p align="right">County of _____</p>								



EXHIBIT W

DESIGN PROFESSIONAL'S SUBMISSION REQUIREMENTS

(To be inserted prior to Contract Execution)

DRAFT

EXHIBIT X

MATERIAL SHIPPING, RECEIVING, HANDLING, PROTECTION, STORAGE AND CLEANING

1.1 General Requirements

Design-Builder shall provide onsite Materials and Equipment control. Design-Builder shall be fully capable of promptly receiving, checking, unloading, handling, and storing all Materials, Equipment and supplies arriving at the project site for the work under this Contract. Design-Builder shall be responsible for its Subcontractors adhering to the material shipping, receiving, handling, protection, storage, and cleaning requirements stated here-in.

Storage areas on the site will be allocated for the Design-Builder's use by the Owner. Equipment and materials shall be stored in assigned lay-down areas. All Materials and other supplies which are stored at a location other than the Premises shall be: (a) stored in a warehouse or other appropriate location approved in advance in writing by Owner; (b) properly tagged and identified for the Work and segregated from other goods; and (c) properly insured.

Before unloading any materials or equipment, the Design-Builder shall prepare and submit a drawing to the Owner for review indicating the proposed layout and use of his storage areas. Storage areas shall be utilized in accordance with the layout indicated on the drawing and as acceptable to the Owner. This drawing shall be kept current and shall indicate the location and description of all stored items for which the Design-Builder is responsible. Revised copies of this drawing shall be submitted to the Owner as they are made. The Design-Builder may propose a database/coordinate system format as an alternate means of providing this information. Any such alternate format shall be reviewed and accepted by the Owner prior to implementation.

Design-Builder shall not deliver, nor instruct any Subcontractor to deliver any Materials or Construction Equipment to the Site unless Design-Builder will be present at the Premises to accept and inspect, with qualified personnel under the QA/QC Program, such Materials or Construction Equipment. In no event will Owner accept on behalf of Design-Builder, or be responsible for, any Materials or Construction Equipment ordered by Design-Builder and delivered to the Premises. Any shipments that are sent directly to the Site (including those ordered by Subcontractors) shall be clearly marked to the Design-Builder's attention and show the Design-Builder's Purchase Order number and the Contract number issued by Owner to the Design-Builder.

1.2 Hazardous Materials.

Hazardous materials documentation provided by suppliers of Owner-furnished equipment and materials will be furnished to the Design-Builder.

1.3 Shipping

Subject to the terms of the Contract, Design-Builder shall pick the mode of transportation and shipping consistent with Schedule requirements and with the Materials being shipped. Owner may route and specify the mode of transportation for shipments of all Materials purchased by Owner for the Work.

Design-Builder shall arrange to wrap, pack, crate, load, enclose, and brace all Materials purchased for the Work on a carrier in a good, workmanlike manner and in accordance with applicable standard trade procedures and practices.

Equipment shall be adequately sealed and protected during shipment to prevent corrosion, entrance of foreign matter and possible damage from rough handling during transit. Any articles or materials that might otherwise be lost in shipping shall be boxed or wired in bundles and plainly identified.

Items which must be off loaded with a crane shall be shipped with pre-engineered lifting fixtures attached to the container or equipment module. The item shall be clearly marked to show its gross weight, center of gravity, and capacity of each lifting fixture.

1.4 Receiving

Design-Builder shall inspect, with qualified personnel under the QA/QC Program, all Materials and immediately reject any Materials that are damaged or do not conform to the requirements of the Contract Documents. Any additional costs

associated with Design-Builder's failure to reject such damaged or non-conforming Materials shall not be the basis for an increase to the GMP.

The Design-Builder shall be responsible for the prompt unloading of all equipment and materials received into his custody and shall pay any demurrage.

The Design-Builder shall replace all Owner-furnished equipment and materials that are lost or damaged while in the custody of the Design-Builder. Replacement materials and equipment shall be of a type and quality equal to the original materials and equipment, shall be acceptable to the Owner, and shall be obtained expeditiously to prevent delay of the work. Extensions of time will not be granted for delays caused by failure to receive replacement materials and equipment at the time required for their installation.

The Design-Builder shall maintain a current, accurate inventory and record of location for all equipment and materials in his custody.

1.5 Handling

The Design-Builder shall handle all equipment and materials carefully to prevent damage or loss, shall store them in an orderly manner, shall keep adequate and convenient records of their location, and shall keep a continuously accurate inventory.

The use of bare wire rope slings for unloading and handling materials and equipment is prohibited except with the specific permission of the Owner.

The Design-Builder shall re-handle and reload, if required, all Owner-furnished materials and equipment that have been rejected.

The Design-Builder shall handle and load all returnable packing boxes, special handling devices, and cable reels for Owner-furnished materials and equipment and shall prepare shipping papers therefore, if required. All such materials shall be returned as promptly as possible.

1.6 Storage and Equipment Protection

1.6.1 General

All equipment shall be protected from damage of any kind from the time it is unloaded until it is ready for initial operation. Electrical equipment such as switchgear, load centers, motor control centers, control panels, transformers, motors, etc., shall be stored indoors in areas with dust control. Electronic equipment shall be stored in areas with temperature, dust, and humidity control. The Design-Builder shall review the manufacturer's storage maintenance requirements and satisfy those requirements in addition to the requirements listed herein.

All platforms, enclosures, shoring, and weatherproof coverings provided by the Design-Builder for storage use shall remain the property of the Design-Builder and be removed upon completion of the Work.

The Design-Builder shall maintain a storage maintenance log for all equipment from the time it is received until the equipment is placed in service.

During the installation period, all equipment having drive-motors or rotating parts shall be protected with a weatherproof, flame resistant sheeting that completely covers the exposed parts of the equipment. Sheeting material shall be subject to the approval of the Owner.

Equipment shall be suitably protected from weld spatter and weld induced electrical current during construction.

Equipment housed or covered with glass or equipped with easily broken components shall be protected as required to prevent damage throughout the construction period.

Machine finished surfaces, polished surfaces, or other bare metal surfaces that are not to be painted, such as machinery shafts and couplings, shall be provided with temporary protection during storage and construction periods by a coating of a suitable rust-preventive compound, as approved by the Owner.

Stored materials and equipment shall not be allowed to contact the ground. In warehouses that do not have dry concrete or suspended floors, materials and equipment shall be stored on platforms or shoring.

Strip heaters and similar heating devices furnished with electrical equipment shall be electrically connected to provide protection during storage. Heaters shall be energized immediately upon placement of the equipment in storage, and maintained in an energized condition until they can be energized from a permanent connection. An electric light bulb with guard shall be placed at each piece requiring space heating. The light bulb shall be energized from the temporary construction power circuit to indicate status of the space heater circuit. If permanent electrical power is not available when the equipment is installed in its permanent location, electrical equipment requiring strip heaters and similar heating devices shall be suitably connected to a reliable temporary power source provided by the Design-Builder.

Motor bearings, collector rings, commutators, control components, and other exposed parts shall be protected against corrosion and periodically inspected. Brushes shall be lifted from rings to prevent galvanic corrosion. Bearing oil reservoirs shall be filled to the indicated level with the proper lubricating oil. At the end of every month in storage, the rotor shall be rotated until the journals are covered with oil to lubricate the journals and prevent corrosion. Where bearings are grease lubricated, the rotors shall be rotated not less than five revolutions at the end of every month to cover the bearing parts with new grease. Where moisture condensation or flooding does occur, sleeve bearings shall be removed from housings to prevent corrosion of the journal. Shoes of vertical pivoted shoe type bearings shall be removed and the rotor supported on jacks to prevent galvanic corrosion of the runner surface.

All electric motors and generators shall be examined for damage and the windings shall be meggered upon receipt and at the time of energization to check insulation resistance. Motors rated 100 hp (75 kW) and larger shall be meggered every 2 weeks prior to energization. Readings shall be logged and submitted to the Owner at the time of equipment turnover. If the motor winding insulation megger values are below rated kV plus 1 megohm, the motor windings shall be dried in a manner acceptable to the motor supplier.

Mechanical dehydrators provided in control panels shall be maintained in operation from the date of receipt of equipment.

All openings in equipment and piping not stored under weatherproof covers shall be closed to prevent entrance of dirt or moisture during storage.

1.6.2 Storage Methods.

Except as otherwise specified, the storage method to be used for various materials and equipment shall be determined as follows:

Equipment shall be stored in accordance with the requirements of the equipment supplier. Space heaters furnished on equipment shall be energized by the Design-Builder during storage if required by the equipment supplier or the Owner.

Equipment and materials which incorporate electrical equipment or which have finish painted surfaces, and other items which would be damaged by outdoor exposure, shall be stored indoors as indicated herein. When such storage would present an unreasonable building space or volume requirement, the equipment or materials may, when acceptable to the Owner, be stored on shoring under weatherproof coverings as indicated herein or platforms as indicated herein. The coverings shall cover the top and sides of the equipment, shall be lapped to shed water, and shall be fastened securely around the base of the equipment.

All small, loose items which could be easily lost, stolen, broken, or misused shall be stored indoors.

All other equipment and materials shall be stored on open platforms or shoring.

Combustible and flammable materials shall be handled and stored in accordance with the Contract Documents and Prudent Industry Practice.

Any spills shall be immediately contained and cleaned up by the Design-Builder. All hazardous waste and materials generated during the containment and cleanup process shall be properly disposed of by the Design-Builder.

All storage methods shall be acceptable to the Owner.

1.6.3 Indoor storage facilities

Indoor storage furnished by the Design-Builder shall consist of suitable construction trailers or portable enclosures and shall be weathertight, well ventilated, and secured against theft and vandalism. Equipment and materials shall be placed on shoring to permit air circulation under the stored item. Access doors shall be adequate to accommodate the movement and handling of materials and equipment to be stored and shall be equipped with secure locks.

Indoor storage facilities shall be acceptable to the Owner.

1.6.4 Open platforms

Open platforms shall be Design-Builder-constructed from sound lumber not less than 2 inches nominal thickness. Open platforms shall be adequately constructed to support the loads imposed by the stored materials and equipment. Platforms shall be level, shall be supported on concrete block piers, and shall be not less than 18 inches above grade.

Shoring for storage of materials and equipment shall utilize sound timbers not less than 6 inches by 8 inches nominal size. Shoring shall be arranged to provide 8 inches of clearance above grade.

1.6.5 Coverings

Weatherproof coverings for outdoor storage shall utilize waterproof, flame resistant type sheeting. Sheeting widths shall be the maximum practicable and, if necessary, widths may be built up by using waterproof taped splices. The sheeting shall be carefully placed and tied down to prevent moisture from entering the laps and to prevent wind damage to the coverings.

1.7 Cleaning

All equipment shall be cleaned of all sand, dirt, and other foreign materials immediately after removal from storage and before equipment is brought inside the power plant facility or to other installation sites. If cleaned on site, cleaning must be conducted in location specified by Owner.

Before initial operation of individual items of equipment, and prior to acceptance by Owner, the Design-Builder shall remove all dirt, mortar, and other material that has been spilled, misplaced, or otherwise allowed to mar the finish surfaces. The interior of all electrical equipment, including relays and electrical contacts, shall be thoroughly wiped and vacuumed clean. All debris shall be removed from the site and disposed of.

1.8 Maintenance Tools and Spare Parts

The Design-Builder shall use special tools furnished with equipment only when authorized by the Owner. All special tools furnished with equipment for maintenance shall be stored as directed by the Owner. Spare parts furnished with the equipment shall be inventoried and stored. Spare parts shall not be used unless so directed by the Owner.

EXHIBIT Y

SAMPLE NEW YORK SALES AND USE TAX EXEMPT CERTIFICATE

DRAFT



Department of Taxation and Finance

New York State and Local Sales and Use Tax

Contractor Exempt Purchase Certificate

ST-120.1

(5/16)

To be used **only** by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:
You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exempt purchase certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

This form cannot be used to purchase motor fuel or diesel motor fuel exempt from tax.

To contractors and vendors: Read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

Name of seller			Name of purchasing contractor		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

- I have been issued a New York State *Certificate of Authority*, _____, to collect
(enter your sales tax identification number)
New York State and local sales and use tax, and that certificate has not expired or been suspended or revoked.
- The tangible personal property or service being purchased will be used on the following project:

located at _____

for and with _____

pursuant to prime contract dated _____.

- These purchases are exempt from sales and use tax because:
(Mark an X in the appropriate box; for further explanation, see items A through P in the instructions on pages 3 and 4.)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> A. The tangible personal property will be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under Tax Law section 1116(a). <i>(For example, New York State government entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status.)</i> The tangible personal property will become an integral component part of such building, structure, or real property. | <input type="checkbox"/> C. The tangible personal property will be used: <ul style="list-style-type: none"> • in an Internet data center when the property is to be incorporated as part of a capital improvement; or • directly and predominantly in connection with telecommunications services for sale or Internet access services for sale; or • directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs. |
| <input type="checkbox"/> B. The tangible personal property is production machinery and equipment, and it will be incorporated into real property. | <input type="checkbox"/> D. The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation. |
| | <input type="checkbox"/> E. The tangible personal property will become an integral component part of a building, structure, or real property, used predominantly (more than 50%) either in the production phase of farming or in a commercial horse boarding operation, or in both. |

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

- F. The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. The tangible personal property is residential or commercial solar energy systems equipment. (Note: Item G purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item G purchases may be exempt from local taxes. See instructions.)
- H. The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.
- I. The tangible personal property is machinery or equipment used directly and predominantly in loading, unloading, and handling cargo at a qualified marine terminal facility in New York City. This exemption does **not** apply to the local tax in New York City.
- J. The tangible personal property is commercial fuel cell systems equipment. (Note: Item J purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item J purchases may be exempt from local taxes. See instructions.)
- K. The services are for the project described in line 2 on page 1 and will be resold. (This includes trash removal services in connection with repair services to real property.)
- L. The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.
- M. The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both provided such tangible personal property will become an integral component part of such structure, building, or real property.
- N. The services are to install residential or commercial solar energy systems equipment.
- O. The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S.
- P. The services are to install or maintain commercial fuel cell systems equipment.

Caution: Contractors may **not** use this certificate to purchase services tax exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Type or print name and title of owner, partner, or authorized person of purchasing contractor	
Signature of owner, partner, or authorized person of purchasing contractor	Date prepared

Substantial penalties will result from misuse of this certificate.

EXHIBIT Z

ENVIRONMENTAL MANAGEMENT PROGRAM

(Design-Builder to supply compliant program)

DRAFT

EXHIBIT AA

FINAL TURNOVER DOCUMENTATION

(Owner may reasonably amend this list prior to the agreement on the final GMP.)

CORRESPONDENCE

Request for Information Log Book
Field Change Request Log Book
Nonconformance Report Log Book
Punch List (all systems, areas, etc.)

CIVIL RECORDS

Survey
Survey Maps/Sketches
Soil Test Reports
Field Density/Compaction Reports
Concrete Field Test Reports
Concrete Compression Test Reports
Grout Inspection/Release Report
Water line testing/inspection reports
Sanitary Sewer testing/inspection reports
Storm Sewer testing/inspection report

FIXED EQUIPMENT

All Test and Certification Records
All manuals, installation guides, and warranty documents
Instrument Calibration Certificates

PLUMBING

All Pressure Test Reports Water Certification (domestic)
RPZ/Double check valve inspection/certification
All medical gas installation certifications

STRUCTURAL STEEL

Structural Steel Welding & Fabrication Inspection Records
Structural Steel Bolting Connection and Inspection Report

GENERAL

O&M Manuals
Spare Parts Lists
Attic Stock Lists
Insulation Inspection Records
Fire Proof Media Sample Test Reports
Fire Proof Inspection Records
Masonry Inspection Checklist
Building Inspection Acceptance Records
HVAC Inspection Reports
Electrical Inspection Reports
As-Built/Record Documents

ELECTRICAL / INSTRUMENTATION

Electrical
Grounding System Inspection Records
Underground Electrical Inspection Records
Electrical Equipment
Transformer Checkout Records
Motor Checkout Records

Switchgear Checkout Records
Breaker Checkout Records
Lighting/Small Power System Checkout Records

FIRE ALARM

Testing Reports
Final Fire Alarm Certification

SUSTAINABLE DOCUMENTS

Final LEED Submission documents
Any Hazardous Waste Documents
Chain of Custody Documentation

ELEVATOR

Final QEI Inspection Certificates
Weight Test Certification

DRAFT

EXHIBIT BB

STORM WATER POLLUTION PREVENTION PLAN

(Design-Builder to supply compliant program)

DRAFT

EXHIBIT CC

NOT USED

DRAFT

EXHIBIT DD

DESIGN-BUILDER'S PROJECT EXECUTION PLAN

(Design-Builder to supply compliant program)

DRAFT

EXHIBIT EE

REFERENCE DRAWINGS/DOCUMENTS

(Appendix 1 (original Subsoil Investigation Recommendation – July 1954); Appendix 2 (original foundation drawings – Buildings 1 and 2); Appendix 3 (miscellaneous original Site plans – Buildings 1 and 2); and Appendix 4 (CHA Site Evaluation Report Harriman Campus - May 2018)).

DRAFT

EXHIBIT FF

NOT USED

DRAFT

EXHIBIT GG

COMPLETION CERTIFICATES

**DORMITORY AUTHORITY – STATE OF NEW YORK
NOTICE OF SUBSTANTIAL COMPLETION**

Institution: _____

Design-Builder: _____

Project Title: _____

Contract No.: _____

Project No. _____

With exception of the Punchlist Work described below and the conditions precedent to Substantial Completion the Dormitory Authority accepts the Work for Substantial Completion on (date) _____, in accordance with the Contract Documents. This date also constitutes start of the Warranty Callback Period.

<u>ITEM</u>	<u>PUNCHLIST WORK</u>	<u>SCHEDULE COMPLETION DATE</u>
1.		
2.		
3.		
4.		
5.		

Note: Attach additional pages if necessary

Approved by the Director, Construction (signature)

Date

D A S N Y

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

TEMPORARY APPROVAL FOR OCCUPANCY

Permit #:

Project #:

Facility:
Address:

Project Title:
Project Description:

IN ACCORDANCE WITH 19 NYCRR 1204.10, THIS CERTIFICATE AUTHORIZES TEMPORARY OCCUPANCY AND USE OF THE FACILITY AND/OR WORK FOR WHICH THE CONSTRUCTION PERMIT IDENTIFIED ABOVE WAS ISSUED. SUCH AUTHORIZATION IS LIMITED TO THE TIME PERIOD SPECIFIED AND MUST BE IN STRICT ACCORDANCE WITH THE CONDITIONS SPECIFIED HEREIN.

TAO Expiration

CONDITIONS:

- 1:
- 2:
- 3:
- 4:
- 5:
- 6:
- 7:
- 8:

Name

Title

Signature

Date

D A S N Y

515 Broadway
Albany, NY 12207-2964
518.257.3000/518.257.3100

One Penn Plaza, 52nd Floor
New York, NY 10119-0098
212.273.5000/212.273.5121

539 Franklin Street
Buffalo, NY 14202-1109
716.884.9780/716.884.9787

NOTIFICATION OF BENEFICIAL OCCUPANCY

Facility: _____	Design-Builder: _____
Project Description: _____	JDE Contract No. _____
JDE Project No.: _____	

As a result of an inspection on _____ DASNY approves the following facilities and/or systems for beneficial occupancy effective _____ except for items noted which are to be completed and/or corrected by the Design-Builder.

Is a Temporary Certificate or Approval for Occupancy (TCO or TAO) being issued? Yes No

Acceptance by DASNY shall not relieve the Design-Builder from completing and/or correcting any deficiencies noted above or any other requirements of the Contract Documents.

Client Signature:		
	Title	Date
DASNY Signature:		
	Title	Date

Distribution:

Design-Builder	Chief
Owner's Technical Advisor	Construction Contracts (original)
Client Representative	Code Compliance Unit (if TAO issued)
	Other

DASNY

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

CODE COMPLIANCE CERTIFICATE

Permit #:

Project #:

Facility:
Address:

Project Title:
Project Description:

DESIGN-BUILDER:

CONTRACT #:

NOTIFICATION OF
CONSTRUCTION COMPLETION

DESIGN-BUILDER:	CONTRACT #:	NOTIFICATION OF CONSTRUCTION COMPLETION

IT IS HEREBY CERTIFIED THAT INSPECTIONS OF THE PROJECT IDENTIFIED ABOVE HAVE BEEN CONDUCTED PURSUANT TO 19 NYCRR 1204.8. SUCH INSPECTIONS INDICATE SUBSTANTIAL COMPLETION OF WORK FOR WHICH THE CONSTRUCTION PERMIT WAS ISSUED. SUCH INSPECTIONS HAVE FURTHER REVEALED NO UNCORRECTED DEFICIENCY OR MATERIAL VIOLATION OF THE UNIFORM CODE WITHIN THE AREA OF WORK FOR WHICH THIS CERTIFICATE IS ISSUED. THIS CERTIFICATE IS ISSUED PURSUANT TO 19 NYCRR 1204.9.

Name

Title

Signature

Date

Contract No. _____

CERTIFICATE OF FINAL COMPLETION

[Name of Design-Builder] ("Design-Builder") hereby submits this document to [Name of Owner] ("Owner"), as written notification and evidence that all Work under Contract No. _____ between Design-Builder and Owner (the "Contract") is complete and that all obligations of Design-Builder have been paid, including Subcontractors, payrolls, materials, freight bills, applicable sales taxes, and other indebtedness connected with the Work on the Project. Design-Builder accepts the sums paid either prior to or in connection with this Certificate of Final Completion by Owner in full satisfaction of final settlement of all its claims arising out of the Contract Documents.

Acceptance by Design-Builder of the above sums as good and valuable consideration includes a waiver and release by Design-Builder of any and all liens, claims, or rights, including but not limited to those arising by virtue of the Mechanic's Lien Laws of the State of New York on account of labor, materials, or both.

Design-Builder hereby acknowledges that Owner has the right to rely on the undersigned's authority for this Certification of Completion.

THIS IS A RELEASE AND AUTHORIZATION. PLEASE READ BEFORE SIGNING.

Signed this _____ day of _____, 20__.

Name Title

Signature Address Date

ACCEPTED BY OWNER:

When duly executed below by an authorized representative of Owner, this Certificate of Final Completion constitutes the acknowledgment of the undersigned that, based on information provided by Design-Builder, Design-Builder has fulfilled the obligations, conditions, and requirements necessary pursuant to the Contract Documents to achieve Final Completion. The date of such Final Completion is hereby agreed to be: _____, 20__. *{Insert date of Final Completion as determined in accordance with the Contract, as applicable}*

Name Title

Date

EXHIBIT HH

CODE OF BUSINESS ETHICS CERTIFICATION FORM

(To be inserted from RFP Response)

DRAFT

EXHIBIT II

WASTE MANAGEMENT FORM

(Project Name)

CONTRACTOR C&D WASTE MANAGEMENT FORM

For Waste Generated On-Site

Company: _____

Contact: _____

Phone: _____

Material Description (Include packaging waste if applicable)	Total Weight	% Reused on-site	% Recycled off-site	% Sent to landfill	Material Recipient

Recycled Material: Material that would otherwise be destined for landfill but is diverted from the waste stream, reintroduced as material feedstock and reprocessed into new end products.

Reused Material: Materials that can be reused in their original form without any reprocessing.

EXHIBIT JJ

COST OF THE WORK – INCLUDED AND EXCLUDED COSTS

1. COST OF THE WORK

1.1 Items Included. The term “**Cost of the Work**” shall mean costs, without mark-up, necessarily incurred by the Design-Builder as a direct result of the Design-Builder’s services during construction of the Project if and only if such costs fall within the definitions set forth below in this Article for Allowable Construction Costs and subject to applicable provisions providing for Owner’s prior approval. Any costs not specifically enumerated in this Article as part of the Cost of the Work are not reimbursable as part of Cost of the Work.

1.2 Allowable Construction Costs.

1.2.1 Wages or salaries paid for labor (not included within the scope of the General Conditions Costs) in the direct employ of the Design-Builder in the performance of its Work under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by the Owner and Design-Builder including such welfare or other benefits, if any, as may be payable with respect thereto and includes the cost of performing Work by the Design-Builder that is not included within the scope of the General Conditions Costs to the extent the Owner selects the Design-Builder’s bid or proposal for the performance of the Work and only as specifically provided in the Design-Builder’s bid or proposal.

1.2.2 Cost of all mandatory and customary employee benefits and taxes for such items as unemployment compensation, worker’s compensation, health insurance, vacations, social security and pensions, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Design-Builder and included in the Cost of the Work under Exhibit JJ, Subsection 1.2.1.

1.2.3 Cost of materials, supplies and equipment incorporated in the Project, including costs of freight, transportation, trucking, storage and warehousing thereof.

1.2.4 Payments properly made by the Design-Builder to Subcontractors for Work performed pursuant to a Subcontract (including the cost of utilities to the extent approved by Owner’s Representative and included in the applicable Subcontractor’s Subcontract).

1.2.5 Solely to the extent necessary to perform the Work and subject to the prior approval of Owner, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Project, whether rented by the Design-Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges no greater than the average for the local market.

1.2.6 The cost of corrective work subject, however, to the GMP, where the need for corrective work was not caused by Design-Builder’s negligence, or breach of this Contract or that of its Subcontractors, agents or employees.

1.2.7 Cost incurred due to an emergency affecting the safety of persons and property.

1.2.8 Cost of bonding of mechanic’s liens against the Project and other reasonable cost for causing same to be removed of record (including reasonable attorney’s fees), but only if Owner has not complied with its obligations under this Contract with respect to the applications for payment of Design-Builder or Subcontractors.

1.2.9 Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, which are not caused by negligent or willful actions of Design-Builder, its Subcontractors or agents.

1.2.10 Protection to adjoining property and to the Project and repairs (i.e., repairs not otherwise paid by applicable insurance) thereto.

1.2.11 Compliance with and all other items relating to requirements of insurers and of safety, health, occupational, environmental and other Laws, regulations, or rulings of Governmental Agencies. Despite the foregoing, there should be no reimbursement for fines and penalties arising out of the substantial violation of Laws relating to labor relations, safety or the environment.

1.2.12 Fees of laboratories for tests required by this Contract.

1.2.13 Sales use or similar taxes, tariffs, or duties imposed by a Governmental Agency and incurred by the Design-Builder in the performance of the Work for which the Design-Builder is entitled to an exemption under Laws; and

1.2.14 Other costs reasonably and properly incurred in the performance of the Work, to the extent such cost is specifically identified by the Design-Builder in advance and agreed to by the Owner.

1.2.15 All cash discounts shall be reported to the Owner and shall accrue to and serve to offset the Allowable Construction Costs of the Work. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall be reported to the Owner and shall accrue to and serve to offset the Allowable Construction Costs, and the Design-Builder shall endeavor to make provisions to secure same.

1.3 Costs Excluded from the Allowable Construction Costs. Notwithstanding Subsection 1.2 (Allowable Construction Costs of the Work) of this Exhibit JJ, in no event shall the Allowable Construction Costs of the Work include any of the following:

1.3.1 Any General Conditions Costs identified in Exhibit OO;

1.3.2 Any costs associated with liquidated damages or damages incurred as a result of Design-Builder fault; Fines, penalties, sanctions or imposition assessed or imposed by any Governmental Agency as a result of Design-Builder fault;

1.3.3 Any costs (including costs associated with correcting Defective Work, including the failure of performance by any Subcontractor, unless specifically authorized pursuant to Contract, Section 2.2.1.1 (Design-Builder Contingency);

1.3.4 Any costs associated with Design-Builder-managed risks, to the extent such costs exceed the Design-Builder Contingency;

1.3.5 Fines, penalties, liquidated damages, damages or impositions) incurred as a result of Design-Builder fault, including the failure of performance by any Subcontractor unless specifically authorized pursuant to Contract, Section 2.2.1.1 (Design-Builder Contingency);

1.3.6 Any cost relating to the Design-Builder's indemnification obligations hereunder;

1.3.7 Any costs incurred in handling disputes or litigation with Subcontractors or any other third party;

1.3.8 The cost of capital, including interest on capital, regardless of whether incurred in connection with the performance of the Work;

1.3.9 Any cost of performing Warranty Work after Final Completion;

1.3.10 Any cost, including legal and administrative costs, associated with the review and negotiation of this Contract, including any Change Order;

1.3.11 Travel, subsistence or personnel expenses unless approved by Owner in writing in advance of such expenses;

1.3.12 Any and all overhead expense or office expense at any location;

1.3.13 Legal and accounting support costs required for any reason and costs of any independent experts hired to assist in connection with resolving disputes;

1.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, unless the Owner's tax exemption does not apply in a particular instance through no fault of the Design-Builder;

1.3.15 Amounts required to be paid by the Design-Builder or any Subcontractor for federal or state income, franchise or other business taxes;

1.3.16 Costs for wages, salaries and professional services fees, to the extent they exceed wage and salary rates or fees identified in Exhibit P or customarily paid for similar services by comparably qualified workers and professions in the State of New York;

1.3.17 Salaries and other compensation for the Design-Builder's personnel stationed at the Design-Builder's principal office or branch offices other than offices at the Project Site;

1.3.18 Expenses of the Design-Builder's principal office or branch offices other than the Project Site;

1.3.19 Any costs not specifically identified as an Allowable Construction Cost under Subsection 1.2 of this Exhibit JJ; or

1.3.20 Any cost which would cause the total Construction Price to exceed the Guaranteed Maximum Price.

1.4 Other Costs.

1.4.1 Bonds and Insurance Fees. With respect to bonds specified in General Conditions, Section 15.08 and Contract, Exhibit Q, the "Bonds Fee" shall be an amount equal to [redacted] % of the Cost of the Work. The "Insurance Fee" shall be an amount equal to [redacted] % of the Cost of the Work. The Bonds Fee and the Insurance Fee shall not be subject to increase in any manner whatsoever. The Bonds Fee and the Insurance Fee shall each be separately and clearly identified in each Application for Payment.

1.4.2 Governmental Approval Fees. The Owner shall pay Governmental Approval application, filing and inspection fees incurred in connection with the performance of the Work. To the extent such fees are payable as a reimbursable cost to the Design-Builder, they shall be separately identified in the associated Application for Payment, shall be payable solely on an actual cost basis without mark-up for overhead, profit, insurance, bond costs, administration or otherwise, and shall not be deemed a component of the GMP.

1.4.3 Subcontract Allowances. The Parties acknowledge and agree that the establishment of specific allowances in Subcontracts entered into for the Work may be included for portions of Work that cannot be specified with sufficient particularity for the competitive bidding or competitive proposal process conducted by the Design-Builder in accordance with General Conditions, Article 6 (Subcontracts) (each such allowance being a "Subcontract Allowance"). All Subcontract Allowances shall be included in award letters which are subject to the approval of the Owner. The Design-Builder shall provide the Owner with a Change Order request establishing the amount to be drawn upon against a Subcontract Allowance and the associated adjustment and the Design-Builder shall have no entitlement to such amount prior to the issuance of a Change Order by the Owner in accordance with General Conditions Article 7. Subcontract Allowances may be increased as necessary to cover the costs incurred against the stated allowance with the Owner's approval by Change Order. Amounts incurred against all Subcontract Allowances shall be Allowable Construction Costs (to which the Design-Builder's Fee, the Bonds Fee and the Insurance Fee will be applied), and subject to the GMP. The Design-Builder shall provide cost substantiation of its costs incurred against all Subcontract Allowances pursuant to this Subsection in connection with each Application for Payment requesting payment thereof. The amount not expended in each Subcontract Allowance shall be for the account of the Owner, and shall not be deemed a component of the GMP.

1.5 General Conditions Costs. The majority of the construction Work will be performed pursuant to a competitive bidding or competitive proposal process conducted in accordance with the provisions of Article 6, Section 6.03. The costs associated with such work is compensable under the Allowable Construction Costs, subject to the Guaranteed Maximum Price and the terms and conditions of this Article. However, the Design-Builder will also incur certain "**General Conditions Costs**" in connection with the performance of the Construction Work, as generally described in Exhibit OO (Description of General Conditions Costs). The Design-Builder also will not be paid any General Conditions Costs in connection with any Warranty Work.

EXHIBIT KK

NON-COLLUSION BIDDING CERTIFICATION FOR SUBCONTRACTOR BIDS

Non-collusive Bidding Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and, in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

1. The prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in the bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

Date: _____

Firm's Legal Name: _____

Street Address: _____

City, State, Zip Code: _____

By: _____

(Signature of Officer)

Title: _____

Officer Name: _____

(Print)

Phone Number: _____

Fax Number: _____

E-Mail Address: _____

Taxpayer ID or Social Security Number: _____

**Submit Bid to:
DASNY
Attn: CONTRACTS UNIT – BID ENCLOSED
515 Broadway
Albany, New York 12207**

EXHIBIT LL

DESIGN-BUILDER LOGISTICS PLAN

(To be provided by Design-Builder)

DRAFT

EXHIBIT MM

NOT USED

DRAFT

EXHIBIT NN

NOT USED

DRAFT

EXHIBIT OO
GENERAL CONDITIONS COST

1.1 GENERAL CONDITIONS COSTS

In connection with the Design-Builder's Work, the Design-Builder is responsible for the General Conditions Costs and associated scope of services, including all costs and services identified in this Exhibit. The Design-Builder's compensation for General Conditions Costs is based on a General Conditions estimate provided by the Design-Builder as agreed to by Owner. Allowable Construction Costs shall not include any General Conditions Costs. The General Conditions Costs shall be subject to adjustment solely as specified in Article 7 of this Contract.

General Conditions Costs shall include costs for the following items incurred during the Construction Period:

(1) Personnel Compensation. General Conditions Costs shall include the actual compensation of personnel engaged in the performance of the Design-Builder Services for full-time and part-time service, subject to the following:

(a) The rate for such personnel includes applicable taxes, employee benefits, insurance payments, disability benefits, bonuses, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, collective bargaining agreements, or amounts which are customarily paid to or on behalf of personnel of the Design-Builder.

(b) The rate shall not apply to non-exempt union labor described in Exhibit OO, Subsection 1.1 (1) (f) below.

(c) The rate shall not apply to partners, principals, or temporary employees of the Design-Builder.

(d) For the duration of the Project, the rate shall be fixed and not be subject to increase for the performance of the Work and all other contemplated services hereunder.

(e) With respect to personnel who bill time on an hourly basis, the hourly rates of such personnel are based on an 1,903 hour work year and such employee shall not bill time for holidays, vacation days, sick leave, or personal days, maternity, medical, or family leave, nor for any other item included in the rate.

(f) The actual wages plus actual fringe benefits paid by the Design-Builder to a worker for work performed on the Project, where such worker is (1) non-exempt and eligible to receive overtime pay, and (2) a member of a labor union; provided, however, that such work is performed and payment made under the terms of an applicable collective bargaining agreement.

(2) Not Used.

(3) Other Expenses. Subject to Exhibit OO, Subsection 1.1 (4) (Excluded Expenses), General Conditions Costs shall include the costs specified in this Subsection 1.1 (3) (the "Other Expenses"). Other Expenses shall include only the following items:

(a) **Field Office Costs.** Other Expenses include those necessary for the operation and furnishing of Design-Builder's field office, including, but not limited to rent, computers and equipment, stationery, supplies, telephone and internet service at the Project, express mail, messenger delivery, postage, and similar petty cash items in connection with the Work. Other Expenses also include usage charges for cell phones, walkie-talkies, radios, and other similar devices. In the event the Owner purchases any equipment pursuant to this Subsection, such equipment will belong to the Owner.

(b) **Printing Costs.** Costs of the equipment on Site and the necessary printing of all drawings, specifications, and other approved reproductions.

(c) **Photos.** Costs of photos of the Work.

(d) **Cleaning Costs.** Costs of final cleaning of windows, interior areas and curtain wall.

- (e) Miscellaneous Costs. Costs for toilets, surveys, safety supplies, signage, advertising for procurement of Trade Subcontractors and M/WBE/SDVOB suppliers, factory visits, maintenance (labor, carting, and cleanup)
- (f) Flag persons. Costs for flag persons and street cleaning.
- (g) Barricades/Fences. Costs for temporary barricades and Project Site fencing.
- (h) Not Used.
- (i) Overtime or Compensatory Time. Costs of overtime pay or compensatory time for non-exempt non-union personnel.

(4) Excluded Expenses. The Design-Builder agrees that the following expenses, even if incurred in furtherance of the Work, shall not be General Conditions Costs and shall be solely the responsibility of the Design-Builder:

- (a) Overhead. Design-Builder's overhead, including, without limitation, expenses necessary for the operation and furnishing of the Design-Builder's principal office, such as furniture, equipment, stationery, supplies, telefax, telegrams, long distance telephone calls, telephone service, express mail, messenger delivery, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies and similar petty cash items in connection with the Work.
- (b) Principal or Branch Office Salaries. Salaries or other compensation of the Design-Builder's personnel at the Design-Builder's principal office and branch offices.
- (c) Branch Office Expenses. Expenses of the Design-Builder's branch offices.
- (d) Meals. Meals for the Design-Builder's personnel.
- (e) Capital Expenses. Any part of the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.
- (f) Rental or Depreciation Costs. Rental or depreciation costs.
- (g) General Expenses. General expenses of any kind, including, but not limited to, employee bonuses.
- (h) Willful Misconduct, Negligence or Breach. Costs incurred due to the willful misconduct or negligence of, or breach of this Contract by the Design-Builder, any Trade Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- (i) Professional Organization Fees. Costs incurred by reason of the Design-Builder's membership in, or fees paid by the Design-Builder, to trade or professional organizations.
- (j) Income Taxes. The Design-Builder's federal, state, or local income taxes.
- (k) Warranty Work. Any cost of performing Warranty Work.
- (l) Hazardous Duty Pay. Overtime or hazardous pay, including overtime work or night work or pay for performing hazardous duties.
- (m) Travel Expenses, local travel expenses (including taxis trains, etc.).
- (n) Sales Taxes for which an Exemption is Available. Any tax paid by the Design-Builder with respect to any purchase or rental charge, including, without limitation, New York State or New York City sales tax, where the purchase or rental charge is exempt from such tax pursuant to this Contract (and Owner has timely provided the Design-Builder with any necessary documentation in connection with same).

EXHIBIT PP

ASSUMPTIONS, EXCLUSIONS, AND EXCEPTIONS

(Document to be developed prior to the Effective Date)

DRAFT

EXHIBIT QQ

PROJECT LABOR AGREEMENT

(To be developed and provided by Design-Builder for Owner review and approval if applicable)

DRAFT

EXHIBIT RR

NOT USED

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EXHIBIT SS

NOT USED

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