

Date

Master Contract No.

MASTER CONTRACT FOR DESIGN-BUILD WORK

This Master Contract for Design-Build Work (the “Contract”) is hereby made and entered into as of this ___ day of _____, 20__ (“Execution Date”) by and between **[NAME OF FUND]**, having its principal office and place of business at [Address of Fund], hereinafter referred to as the Owner, and _____, whose office is located at _____, hereinafter referred to as the Contractor for the design, architecture, engineering, procurement, construction, start-up, testing, and commissioning of one or more completed retail cannabis dispensary facilities, including all related appurtenances as more fully defined below and in the Contract Documents (the “Work”) to be performed at the premises located at the address set forth in the applicable Work Order (the “Leased Premises”) leased by Owner from the landlord set forth in the applicable Work Order (“Landlord”) pursuant to a Lease Agreement dated as of _____, 2022 (“the Lease Agreement”) between Owner and Landlord (“Facility”). Owner and Contractor may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Owner intends to design, procure, construct, assemble and commission retail cannabis dispensary facilities to be located at multiple Leased Premises throughout New York State in accordance with the Marijuana Regulation and Taxation Act (MRTA); and

WHEREAS, the Owner is engaging the Contractor to design, construct, assemble, commission and test certain of said retail cannabis dispensary facilities pursuant to separate Work Orders issued under this Contract; and

WHEREAS, each such retail cannabis dispensary facility for which a Work Order is executed by the Parties is hereinafter referred to as a Project; and

WHEREAS, each Work Order upon its execution by the Parties hereto shall constitute a Contract Document obligating the Contractor to provide the services as defined in the Work Order in accordance with the terms and conditions of this Contract; and

WHEREAS, Owner has retained the Dormitory Authority of the State of New York (“DASNY” or “Construction Manager”) to act as a Construction Manager/Adviser on behalf of the Owner and to exercise those powers and perform those services as agent of the Owner as more specifically described in the Construction Manager/Adviser Agreement between Owner and DASNY dated as of _____, 2022 (the “CM/a Agreement”) and as also delineated in this Agreement; and

WHEREAS, DASNY in its capacity as Construction Manager, is acting solely as agent to the Fund and therefore is not a party to this Contract and assumes no obligations or liability to the Contractor or its Subcontractors hereunder; and

WHEREAS, the Owner and the Contractor have agreed upon the General Conditions for the Work for the Project attached hereto as Exhibit A (“General Conditions”), and have established anticipated categories of General Requirements that will be included in the final Work Orders attached hereto as Exhibit B (“General Requirements”); and

WHEREAS, the Owner and the Contractor shall agree upon a Scope of Work for each Project (“Scope of Work”) at the time of execution of the Work Order by the Parties hereto; and

WHEREAS, each Work Order shall, among other things, set forth the amount for compensation to be paid by the Fund for the Work and a completion date for the Project; and

WHEREAS, Owner desires to engage Contractor, and Contractor agrees to be so engaged by Owner, to design, engineer, procure, construct, assemble, start-up, commission, and test one or more Projects as defined in the applicable Work Orders in accordance with the Contract Documents (as defined in General Conditions, Section 1.01); and

NOW, THEREFORE, the Owner and the Contractor hereby mutually covenant and agree as follows:

ARTICLE I: THE WORK

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

B. **Engineering, Procurement, Installation, Management and Construction Concept**. Contractor will perform all of the Work so that it results in Contractor completing all applicable portions of the Work as set forth in, or reasonably inferable from, the Contract Documents, for Owner's use, before the final completion date established for the Project and for the Contract Sum. Contractor acknowledges that Owner is relying on the expertise of Contractor to furnish the completed Work in accordance with the requirements of the Contract Documents. Contractor, prior to the Effective Date of the Work Order, shall review the Contract Documents, and by executing the final Work Order for the Project, agrees that they are sufficient to perform all of the Work, and agrees that Contractor will not make any claims for additional costs or extensions of the Project Schedule based on the content of the Contract Documents being insufficient to complete the Work.

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

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

1. **Notification of Owner Action**. Contractor shall promptly notify Owner and Construction Manager in writing that a specific action must be taken by Owner whenever Contractor believes that Owner's lack of action (including any review, response or approval) may delay Contractor's execution of the Work or impact the Contract Sum.
2. **Contractor Obligations**. Unless otherwise permitted by the Contract Documents, Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents as a result of any activities or duties of Owner, including any

action or inaction, or due to tests, reviews, inspections, or approvals required or performed by persons or parties other than Contractor.

3. **Responsibility.** Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, its Subcontractors, and their agents and employees, and other persons performing any of the Work or supplying any equipment or material for the Work under a Subcontract with Contractor.
4. **Administration/Standard of Care.** The relationship between Owner and Contractor is one of trust and confidence, with Owner relying upon Contractor for fair and honest, as well as experienced and competent judgments and opinions regarding all aspects of the Project. Contractor shall perform the Work required by the Contract Documents, or if not otherwise specified in the Contract Documents, in accordance with the applicable standard of care, Good Design-Build Practice, or the quality generally recognized and accepted within the construction industry.

Contractor shall fully cooperate with Owner, Construction Manager, Construction Manager's Design-Professional, and Owner's Separate Contractors in furthering the interests of Owner with respect to the Project. Contractor agrees to furnish efficient business administration, project management, and project oversight, and to use its best efforts to furnish at all times an adequate supply of qualified design professionals and procurement, construction, safety and quality assurance professionals, workers, craft labor, supervision, construction equipment, and materials. Contractor shall perform the Work in the most expeditious and economical manner consistent with good design and construction practices.

E. **Commencement of Work.** Contractor shall commence the Work under this Contract upon either the Effective Date of the Work Order or the issuance of a Notice to Proceed. Unless otherwise authorized in writing by Owner, Contractor shall not commence any Work, nor shall any Work be deemed to have been commenced under this Contract, prior to the Effective Date of such Work Order or Notice to Proceed.

1. **Sufficiency of the Contract Documents.** The Scope of Work as set forth in the Work Order and the Concept Program (attached hereto as Exhibit C) shall constitute the agreed upon Work that the Contractor will perform as part of its Contract and includes documents, such as specifications and drawings, developed before and subsequent to the Effective Date that are incorporated into the Contract as Contract Documents. Contractor shall review the Contract Documents as further defined in the Definitions section of the General Conditions, including the Scope of Work and, by signing the Work Order, agrees that the activities included therein are sufficient to perform all of the Work for the Project. Contractor further agrees that, after the Effective Date, it will not make any claims for additional costs or extensions of the Project Schedule based on the content of the Scope of Work or Concept Program being insufficient to complete the Work.

F. **Contractor's Work.** The Contractor's Work shall include, but not be limited to, all Articles of this Contract, all Work enumerated in the Contract Documents, including, but not limited to, the Work Order, the General Conditions, the General Requirements, the Scope of Work, the Concept Program, and all obligations imposed upon the Contractor by the Contract Documents.

ARTICLE II: EXTRA WORK

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

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

ARTICLE III: OWNER’S SEPARATE CONTRACTOR’S

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

B. Contractor acknowledges and agrees that DASNY: (i) is acting solely in its capacity as Construction Manager and agent to the Fund; (ii) is not a party to this Contract; and (iii) assumes no obligations or liability to the Contractor or its Subcontractors hereunder.

ARTICLE IV: PROVISION FOR PAYMENT

A. Each Work Order shall contain a detailed Scope of Work to be accomplished, the Contract Sum, and the Contract Time. The Work Order (upon execution by the Parties hereto) shall constitute a Contract Document and shall be made a part hereof, subject to adjustment, if any, of the Contract Sum pursuant to the provision of General Conditions, Article 7. The Contract Sum shall be established on a Lump Sum (LS) basis unless adjusted pursuant to an approved Change Order.

B. Payments for Contractor’s Work shall be made monthly in accordance with this Article IV herein, General Conditions, Article 8 (Payment), and General Requirements, (Payment Procedures) in proportion to Work performed and approved by Construction Manager as agent of the Owner. Payments shall be requisitioned on the Construction Manager’s form (Contractor Application for Payment), with an accompanying copy of certified payrolls for the Contractor and its Subcontractors and other appropriate backup. Contractor’s and its Subcontractors’ certified payrolls shall show the names and rates of pay of all personnel performing the Work during the payment period, and their position classification. Said form must be included as a part of any Contractor Application for Payment related to the Work. Payment shall be made in accordance with the approved Schedule of Values to be attached to the Work Order, which summarizes payments to be made under the payment provisions of the Contract Documents after the applicable Work is completed.

C. The Contractor shall file no mechanic’s or materialman’s lien or maintain any claim against the Owner’s funds, real estate, property, or improvements for or on account of any work done, labor performed, or materials furnished under this Contract. The Contractor shall use its best efforts to prevent the placement of any liens on any Owner funds, real estate, property, or improvements by Contractor’s Subcontractors or their employees. If Contractor fails to prevent the filing of such liens or fails to bond against such liens, Contractor shall be responsible and liable for, and shall indemnify Owner, Landlord and Construction Manager for all of Owner’s and Construction Manager’s costs, expenses (including attorneys’ fees), liabilities, damages, fees, penalties, judgments, and settlement costs arising either directly or indirectly from the placement of such lien. The obligations and liabilities of Contractor under this Article shall not apply where the basis for such lien relates to amounts invoiced by Contractor that are either not paid or are disputed by Owner or by Construction Manager on behalf of the Owner.

D. The Contractor agrees that: (i) the Contract is a general obligation of the Owner; (ii) the Construction Manager is not a party to this Contract and shall have no liability to the Contractor or any of its Subcontractors; and (iii) the Contractor hereby releases the Construction Manager from any and all claims that it may now or in the future may have against the Construction Manager as a result of actions taken by the Construction Manager under this Contract.

ARTICLE V: FINAL PAYMENT AND RELEASE

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

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

ARTICLE VI: MASTER CONTRACT AND CONTRACT EXHIBITS

A. This Contract is a Master Contract for use on multiple Projects, with each Project covered by a separate Work Order (a "Work Order") that will contain its Project specific versions of the General Requirements, Scope of Work, and Schedule of Values. Each Work Order will incorporate by reference the terms of this Contract and the General Conditions.

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

ARTICLE VII: CONTRACTOR'S SUBCONTRACTS

A. Subcontracts with Subcontractors. To the extent commercially practicable, Contractor agrees to bind every Subcontractor with whom Contractor enters into a Subcontract to all provisions of the Contract Documents that are applicable to the Work to be performed by the Subcontractor. Contractor shall provide Owner a true and complete copy of the following: (i) each specification issued by Contractor for those Subcontracts that Contractor will enter into for the Project; and (ii) upon Owner's request, each Subcontract entered into by Contractor for the Project, either promptly upon execution of the Subcontract or at finalization prior to execution of the Subcontract. Contractor shall also incorporate the language of Subarticles VII 1 - 4, as set forth below, into each Subcontract entered into with the proposed Subcontractors:

1. The Owner is "intended Third-Party Beneficiary of this agreement."
2. Upon default of the Contractor under the Owner/Contractor Contract, the applicable Subcontractor shall be required to continue to perform all its respective covenants and obligations for the benefit of the Owner.

3. Subcontractor of any tier shall be bound to Contractor by the applicable terms of the Contract Documents between Owner and Contractor, and shall assume toward Contractor all obligations and responsibilities which Contractor, by those documents, assumes toward Owner.
4. Owner may elect at any time or from time to time, including in connection with the termination of the Contract between Owner and Contractor, to have this Subcontract assigned from the Contractor to Owner or any entity designated by Owner, and the parties agree that such assignment shall be effective upon the delivery of a notice of such election by Owner to the Subcontractor.

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

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

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

ARTICLE VIII: TERM OF CONTRACT; TIME OF COMPLETION

A. The Contractor shall commence performance of services upon the Effective Date of any Work Order or Notice to Proceed issued under this Contract. Each Work Order shall contain a detailed Scope of Work to be accomplished, the Contract Sum, and the completion date for each Project

B. The term of this Contract for Design-Build Work shall commence on the Execution Date and terminate on [], except that the Contractor shall continue to provide services and complete any and all Work required under Work Order(s) issued under this Contract even though Work performed under said Work Order(s) may extend beyond the termination of this Contract. The Owner may, at its sole discretion, extend the term of this Contract for Design-Build Work and continue to issue Work Orders hereunder.

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.

IN WITNESS WHEREOF, the Owner and Contractor have executed this Agreement as of this _____ day of _____.

CONTRACTOR

_____ By
_____ Title

[NAME OF FUND]

_____ By
_____ Title

NEW YORK STATE ACKNOWLEDGEMENT – [NAME OF FUND]

State of New York)
) SS:

County of _____)

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

Signature of Notary

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

NEW YORK STATE ACKNOWLEDGEMENT – Contractor/Consultant

State of New York)
) SS:

County of _____)

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

Signature of Notary

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

EXHIBIT A

GENERAL CONDITIONS OF THE WORK

EXHIBIT B

Outline of proposed General Requirements to be included in Work Order

CONTRACT SUMMARY OF WORK

Section Description: Responsibilities of the Design-Builder to perform the Work and associated coordination for temporary facilities and controls

PAYMENT PROCEDURES

Section Description: Administrative requirements for Design-Builder's Application for Payment

PROJECT MANAGEMENT AND COORDINATION

Section Description: Administrative requirements for project meetings; preconstruction, construction kick-off, progress; RFIs

CONSTRUCTION PROGRESS DOCUMENTATION

Section Description: Design-Builder's responsibility to coordinate and cooperate with Owner to maintain the project schedule;

SUBMITTAL PROCEDURES

Section Description: Procedures for action and informational submittals including product submittals and submittal schedule

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

TEMPORARY FACILITIES AND CONTROLS

Section Description: Temporary utilities and facilities for construction support, security and facility protection

PRODUCT REQUIREMENTS

Section Description: Administrative and procedural requirements for product, material, and equipment selection and handling, warranties and comparable products

CUTTING AND PATCHING

Section Description: Procedural requirements for cutting and patching

CONSTRUCTION WASTE MANAGEMENT

Section Description: Procedural requirements for construction waste management with criteria for recycling and/or salvaging demolition and construction waste

CONTRACT CLOSEOUT REQUIREMENTS

Section Description: Administrative contract closeout requirements including closeout conference, Notice of Substantial Completion, final Application for Payment and final cleaning

OPERATION AND MAINTENANCE MANUALS

Section Description: Maintenance and record keeping requirements of operational and maintenance manuals for products and equipment

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

SUSTAINABLE DESIGN REQUIREMENTS

Section Description: General requirements and procedures for LEED prerequisites and credits

GENERAL COMMISSIONING REQUIREMENTS

Section Description: Administrative requirements and procedures for commissioning all systems

EXHIBIT C

CONCEPT PROGRAM

(Provided as Attachment 3 to the RFP)

EXHIBIT D

Contractor's Subcontract with Design Professionals