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GENERAL CONDITIONS OF THE WORK

ARTICLE 1 – DEFINITIONS

Section 1.01 - Definitions

The following terms as used in the Contract Documents shall be defined as follows:

Addendum or Addenda – Additional provisions of the Contract Documents issued in writing prior to the receipt of proposals.

As-built – A set of drawings, specifications, and schedule prepared by the Contractor, which include any revisions in the drawings, specifications, and schedule during construction, indicating how the Work was actually constructed.

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

Change Order – Written Notice, in a standard Owner’s form, to the Contractor, signed by the Contractor and executed by the Owner changing the Contract in accordance with Article 7- Changes in the Work.

Claim – A demand by the Contractor seeking, as a matter of right, 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 Contractor arising out of or relating to the Contract.

Concept Program – The document attached hereto as Attachment 3 of the RFP.

Construction Aids – 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 Contractor as part of, or necessary for, completion of the Work, but which are not intended to become a permanent part of the Project.

Construction Documents – the documents provided by the Contractor pursuant to Section 4.12(C), as the same may be revised or supplemented pursuant to this Agreement.

Construction Manager – DASNY, in its role as Construction Manager/Adviser to Owner or as more specifically described in the Construction Manager/Adviser Agreement between Owner and DASNY dated as of _____, 2022 (the “CM/a Agreement”).

Consultant – A person, persons, firm, partnership or corporation providing architectural, engineering, or other professional services, and so designated by the Owner.

Contract Closeout – Final completion and acceptance of the performance of the Work evidenced by the final payment to the Contractor by the Owner.

Contract – The agreement between the Owner and the Contractor consisting of the Contract Documents.

Contract Documents – The Contract for Design-Build Work including the Exhibits thereto, these General Conditions of the Work, the General Requirements for the Work, the final Work Order executed by the

GENERAL CONDITIONS OF THE WORK

Parties, the Payment Bond, the Performance Bond, Drawings, the Scope of Work and any final conformed specifications (or sealed design drawings provided by Contractor as identified in the Scope of Work), the Concept Program, Addenda incorporated into the Contract Documents, any duly executed Change Orders, and any other documents identified in this Contract as being incorporated into the Contract Documents.

Contractor – A person, persons, firm, partnership or corporation with whom the Contract is entered into by the Owner to perform the Work.

Contractor's Design Proposal – Those Design Documents submitted by the Contractor to the Owner and Construction Manager pursuant to Section 4.11 of this Agreement, as the same may be revised or supplemented pursuant to this Agreement.

Contract Sum – Shall have the meaning ascribed thereto in the Contract for Design Build Work and be in the amount set forth in the final Work Order executed by the Parties.

Contract Time – The number of days or the dates stated in the Contract Documents to complete the Work on or before all of the milestone including, but not limited to, the following: (i) achieving the contractual Substantial Completion date; and (ii) completing the Work so that it is ready for Final Payment as delineated in the Contract Documents.

Defective or Defect – Items of Work, or any portion thereof, that do not conform to the Contract Documents.

Design Documents – All of the submittals, drawings, design plans, specifications, calculations, product data, technical data and other documents prepared by the Contractor or its Subcontractors, and reviewed by Owner or Owner's Design Professional, that show the scope, extent, and character of the Work to be furnished and performed by Contractor or its Subcontractors.

Design Professional – A person, persons, firm, partnership or corporation providing architectural, engineering, or other professional services for the Owner.

Design Work – The architectural, engineering, and surveying services provided by Contractor as a part of the Work.

Dormitory Authority or DASNY – 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.

Effective Date – The date on which the final Work Order is signed by the Parties.

Execution Date – shall have the meaning ascribed thereto in the Master Contract for Design-Build Work.

Extra Work – Any work in addition to the Work initially required to be performed by the Contractor pursuant to the Contract Documents.

Facility – The retail cannabis dispensary facility to be constructed at the Leased Premises (as defined in the recitals to the Agreement).

False Claim – Any Claim which is, either in whole or part, false or fraudulent.

False Representation – This action 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.

Forced Change Order – Written Notice, in a standard Owner’s form, to the Contractor, without the Contractor’s signature and executed by the Owner changing the Contract Documents in accordance with Article 7 – Changes in the Work.

Furnish – To deliver to the Site ready for installation.

Good Design-Build Practice – Good Design-Build Practice means, with respect to each of the architectural, engineering, procurement, design, construction, commissioning, operation, testing and maintenance of the Work, the standards, practices, methods, techniques, and acts engaged in or approved by a significant portion of the building construction industry of the United States (including the design-build construction industry) related to retail cannabis dispensary facilities and similar structures that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, are generally recognized and accepted as good practice in the delivery of such buildings on a scale and serving purposes similar to the Project or a design-build basis as observed nationally, and would have been expected to accomplish the desired result in a manner consistent with applicable laws, permits, the Contract Documents, reliability, safety, environmental protection, economy, and expedition. Good Design-Build Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather it is a spectrum of possible practices, methods, or acts employed by contractors, and having due regard for current editions of applicable design, safety, and maintenance codes and standards, manufacturers’ warranties, and applicable laws.

Hazardous Material – Hazardous Material means and includes asbestos or any substance containing asbestos, polychlorinated biphenyl’s, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances, or waste under any Hazardous Material Laws.

Hazardous Material Laws – 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., and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

Hazardous Waste – 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.

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Install – To unload at the delivery point at the Site and perform every operation necessary to establish secure mounting and correct operation at the proper location.

Landlord— [Owner of the Facility to be subleased by the Fund to the cannabis retailer]

Lease -- The lease between the owner of the property on which the Project is to be located, in its capacity as Landlord, and the Owner in its capacity as tenant.

Means and Methods – The day-to-day activities employed by the Contractor to perform all of the Work including, but not limited to, supplying or providing labor, supervision, Construction Aids, and the manner and time of their use, necessary to accomplish the result intended by the Contract Documents.

Notice of Substantial Completion – Written Notice, in a standard Construction Manager’s form (attached hereto as Exhibit 1), to the Contractor, executed by the Owner, accepting the Work of the Contract Documents as meeting the requirements for Substantial Completion and constitutes start of the Warranty Callback Period (as discussed in General Conditions, Section 13.08).

Notice to Proceed – Written Notice, signed by the Owner, to the Contractor, that acknowledges receipt by the Owner of the signed Contract and bonds from the Contractor and directs the Contractor to start performance of the Work to the extent authorized in the Notice to Proceed; or, as the case may be, written Notice, in a standard Owner’s form, to the Contractor, executed by the Owner, directing the Contractor to proceed in accordance with General Conditions, Article 7 – Changes in the Work or Article 10 – Claims and Disputes.

Owner – [Name of Fund].

Owner’s Separate Contractors or Separate Contractors – A person, persons, firm, partnership or corporation that has contracted separately with Owner, including, if applicable, the Design Professional, Owner’s Construction Manager, Owner’s Commissioning Authority, and other contractors or consultants retained by Owner to furnish services throughout the term of this Contract. The Contractor shall cooperate with Owner’s Separate Contractors.

Project – The total design, procurement, construction, and commissioning of the Work by Contractor carried out pursuant to the Contract Documents.

Project Schedule – The schedule developed by Contractor to develop, maintain, and update, per the requirements of the Contract Documents, a fully integrated schedule covering all activities from design, procurement, construction, start-up, and commissioning of all systems necessary to achieve completion of the Work in accordance with the Contract Documents.

Provide – To Furnish and Install the Work complete in place and ready for its intended use.

Scope of Work – The Contractor’s Scope of Work includes: the design and construction of a retail cannabis dispensary as described in the Concept Program; 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;

GENERAL CONDITIONS OF THE WORK

Shop Drawings – Diagrams, fabrication drawings, illustrations, schedules, test product data, performance charts, catalog cuts and product data that are submitted by the Contractor and illustrate any portion of the Work.

Site – The area within the Contract limit, as indicated by the Contract Documents.

Stop Work Order – Written Notice, signed by the Owner, to the Contractor, to cease or hold Work of the Contract Documents; if not followed by an order to resume work, it amounts to termination of the Contract.

Subcontract – An agreement, purchase order, contract, lease, or other agreement between the Contractor and Subcontractor for Work on the Site.

Subcontractor – A person, persons, firm, partnership or corporation under a Subcontract with the Contractor, or under contract with any Subcontractor of any tier, to provide labor and material at the Site.

Substantial Completion – The stage in the performance of the Work when all Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use, evidenced by the Notice of Substantial Completion executed by the Owner.

Warranty Call Back Period – Shall have the meaning ascribed thereto in Section 14.01 C. of this Agreement.

Work – All of the services, labor, equipment, and materials to be provided by Contractor for the design, architecture, engineering, modeling, procurement, manufacturing, fabrication, distribution, construction, supervision, project management, safety management, oversight, scheduling, cost analysis, quality assurance, vendor surveillance, corrective action, materials management and handling, training, pre-commissioning, and commissioning, testing, and other related Work required or reasonably inferable from the Contract Documents to fully complete the Project in accordance with the terms of the Contract Documents and all other obligations imposed on the Contractor by the Contract Documents.

Work Order - The document that sets forth the detailed Scope of Work to be accomplished, the Contract Sum, and the date by which the Work is to be completed.

ARTICLE 2 – CONTRACT DOCUMENTS

Section 2.01 - Captions

The tables of contents, titles, captions, headings, running headlines, and marginal notes contained herein and in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect the interpretation of the provisions to which they refer.

Section 2.02 - Electronic Data Transfer

- A. Electronic data includes, but is not limited to, files produced by Contract Manager, email, word processing, spread sheet, data base, payments, other software programs and all Contract Documents.
- B. 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.

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

Section 2.03 - Owner and Contractor's Representatives

- A. **Owner's Representative.** The Owner may act through the Construction Manager for all purposes of this Contract except as otherwise provided in Paragraph H of this Section 2.03. The Construction Manager and Contractor'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 at appropriate times during the Work's duration to discuss the progress made, impediments encountered or expected and their resolution, and all other relevant matters.
- B. **Contractor's Representative.** Unless otherwise agreed in writing by Owner, Contractor shall appoint its Project Manager as Contractor's Representative who shall be available for consultation with Owner and the Construction Manager at all reasonable times. The Contractor's Representative shall be authorized to act on behalf of Contractor, and his or her instructions, requests, and decisions shall be binding upon Contractor as to all matters pertaining to the Contract Documents and the performance of the Work. Contractor shall not change Contractor's Representative without the prior written consent of Owner. If Owner is dissatisfied with the performance of Contractor's Representative, Owner may direct that Contractor remove such person from the position of Contractor's Representative.
- C. **Representative's Access.** Owner, the Construction Manager, 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.
- D. **Compliance with Construction Manager's Directives.** The performance of the Work is the responsibility of Contractor. The Contractor shall issue all appropriate orders to Contractor's employees and Subcontractors. Contractor will closely cooperate with Owner and/or Construction Manager on behalf of the Owner to the extent consistent with the requirements for performance of the Work. Owner may direct Contractor to take such action as Owner deems to be in Owner's interest. If Contractor is of the opinion that any such directive constitutes grounds for issuance of a Change Order, then Contractor shall proceed in accordance with the requirements of General Conditions, Article 7.
- E. The Owner and/or the Construction Manager on behalf of the Owner shall determine the amount, quality, and acceptability of the Work and shall decide all questions that may arise in relation to said Work. The Owner's and/or the Construction Manager's on behalf of the Owner estimates and decisions shall be final except as otherwise expressly provided.
- F. The Owner and/or the Construction Manager on behalf of the Owner may, at its sole discretion, waive certain provisions of the Contract Documents. Such waiver shall only be done in writing and the waiver of one provision shall not act as a waiver of any other provision of the Contract Documents, which shall remain in full force and effect.
- G. Any differences or conflicts concerning performance that may arise between the Contractor and other Contractors performing Work for the Owner shall be adjusted and determined by the Owner.

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H. The Owner may act through the Construction Manager, acting as the Owner’s agent. Notwithstanding any other provisions of this Contract, the Construction Manager, acting as the Owner’s agent, may act in the stead of the Owner for all purposes and provisions of this Contract except that the Construction Manager does not have final authority (except as provided in the CM/a Agreement) to: (i) accept the Contractor’s Design Proposal; (ii) execute Change Orders in accordance with General Conditions, Article 7 and Owner’s Change Order approval process; (iii) approve any amendments to the terms of this Contract or the exhibits thereto; (iv) make payments to be made to, or withhold payments from, the Contractor; (v) accept Substantial Completion and final completion of the Work; (vi) declare a default under this Contract; and (vii) terminate the Contract for cause or convenience Contractor hereby acknowledges and agrees that DASNY in taking any action or giving any direction under this Contract is acting solely in its capacity as construction manager and agent to the Fund and is not a party to this Contract and assumes no obligations or liability to the Contractor or its subcontractors hereunder.

Section 2.04 - 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 delivered personally or sent by facsimile, by nationally recognized express-type courier service requiring delivery receipts, or postage prepaid by U.S. Mail, return receipt requested, as follows:

To Owner:

Attn: _____

and

To Contractor:

Attn: _____

With Copy to Construction Manager:

DASNY
515 Broadway
Albany, New York 12207-2964
Attn: _____

In addition to the above Notice, the Party serving such Notice may also send a courtesy copy via email; provided, however, the email submission and any attachments to such email submission 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 working 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 2.05 - Nomenclature

Materials, equipment or other Work described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Contract.

Section 2.06 - Invalid Provisions

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 2.07 - Interpretation of Contract Documents

- A. **Conflicting Provisions.** 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 Conditions of the Work; (c) the Contract including the General Requirements of the Work (but excluding the remaining Exhibits to the Contract); (d) the terms of the Scope of Work; (e) the Concept Program; (f) the terms of the remaining Contract Exhibits; and (g) Design Documents. 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. Should the Contractor discover any conflicts, omissions, or errors in the Contract Documents, the Contractor 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 Construction Manager. Owner and/or the Construction Manager on behalf of the Owner shall, within a reasonable time, issue in writing the interpretation, clarification or additional detailed instructions requested. Should the Contractor proceed with the applicable Work before receipt of the interpretation, clarification, or instructions from Owner and/or Construction Manager, the Contractor shall replace or adjust any Work not in conformance therewith and shall be solely responsible for any resultant damage or added cost.
- B. 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.
- C. 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 shall govern, unless the Owner directs otherwise.
- D. Drawings and specifications are complementary. Anything shown on the drawings and not mentioned in the specifications, or mentioned in the 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 - Subsurface or Site Conditions Found Different

- A. The Contractor acknowledges that the Contract Sum and Contract Time includes such provisions which the Contractor deems sufficient for all site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract Documents or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to the Execution Date.
- B. Should the Contractor encounter site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Contractor shall immediately give Notice to the Owner and the Construction Manager of such conditions and shall not disturb said conditions until authorized to do so by the Owner.
- C. In the performance of this Contract, Contractor shall comply with all applicable Hazardous Material Laws. Contractor shall provide Material Safety Data Sheets for any hazardous chemicals brought on Site by Contractor. 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) working days prior to the delivery of such materials to the Site. In addition, Contractor shall provide the necessary information in training to its employees on each hazardous chemical to which they may be exposed to on the Site. Contractor, Owner and the Construction Manager shall also exchange suggestions for appropriate protective measures in handling those hazardous chemicals, at Contractor's written request. Contractor 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
- D. Hazardous Material Releases. Contractor will not be responsible for any pre-existing Hazardous Materials not introduced to the Site by Contractor, its Subcontractors or anyone else for whom Contractor is responsible (hereinafter referred to as "pre-existing hazardous conditions"), except to the extent Contractor, its Subcontractors or anyone else for whom Contractor is responsible, by negligence or willful misconduct, exacerbates such pre-existing hazardous condition where Contractor knew or should have reasonably known of such hazardous conditions.
 - 1. If Contractor encounters pre-existing hazardous conditions, Contractor shall immediately: (a) secure or otherwise isolate such condition; (b) stop all Work in connection with such condition and in any area affected thereby; and (c) notify Owner (and thereafter confirm such notice in writing).
 - 2. Contractor shall not be required to resume Work affected by such pre-existing hazardous condition or in any such affected area until after Owner has delivered to Contractor written notice (a) specifying that such condition 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.
 - 3. In the event Contractor or any of its agents causes any spills or releases of any Hazardous Material into the environment that require reporting to any governmental agency or remediation under any laws, Contractor 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. If, in the course of performance of the Work, Contractor or its Subcontractors encounters on the Site or any portion of the Site on which the Work may occur, any substance that

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it reasonably believes is a Hazardous Material, in such quantities and at such levels that may require investigation or remediation pursuant to laws, Contractor shall immediately suspend the Work in the area affected and immediately report the condition to Construction Manager orally followed by a written Notice. To the extent such condition involves (a) a Hazardous Material, including Hazardous Materials contained in Materials supplied by Contractor, introduced to the Site by Contractor, its Subcontractors or any person for whom Contractor or its Subcontractors may be responsible or (b) a Hazardous Material contained in or packed with materials or equipment provided by Contractor or its Subcontractors, then any investigation, response, removal, cleanup or other remedial action required by laws or any governmental agency shall be performed by Contractor or its Subcontractors at their cost.

- E. Contractor shall not use, and shall prohibit Subcontractors from using, any construction materials or equipment (whether or not totally enclosed) containing Hazardous Materials including, but not limited to, asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde; provided, however, Contractor and Subcontractors may use and store in quantities reasonably necessary to perform the Work, but only in accordance with 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, Contractor shall provide Owner with Materials Safety Data Sheets covering any Hazardous Substance furnished under or otherwise associated with the Work (including the construction equipment). Contractor shall maintain on the Site, at all times, complete records and inventories, including Materials Safety Data Sheets, of materials described in this Section 3.01 that are being used by it or its Subcontractors, or any persons for whose actions it is responsible on the Site.
- F. 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 at the sole discretion of the Owner and/or the Construction Manager on behalf of the Owner.
- G. Contractor understands that the Site is constrained with respect to access and available space. Owner and Contractor have agreed on the areas Owner will make available for Contractor's office, equipment and materials receiving and laydown, craft change rooms, equipment and materials storage, and employee parking.

Section 3.02 - Verifying Dimensions and Conditions

- A. The Contractor 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 Contractor immediately shall refer said conflict to the Owner in writing. The Contractor shall comply with any revised Contract Documents.
- B. During the performance of the Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- C. The Contractor 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 Construction Manager.

- D. Contractor shall coordinate special locations for equipment, pipelines, ductwork and other such items of the Work, where not dimensioned on plans, with Contractor's Subcontractors and Owner's Separate Contractors.
- E. The Contractor shall be responsible for the proper fitting of the Work in place.
- F. Contractor has familiarized itself with the Contract Documents, including the Scope of Work, Concept Program, layout and design requirements, conceptual design objectives, and with pertinent Project dates and programming needs, including the Project Schedule.

Section 3.03 - Surveys

Unless otherwise expressly provided in the Contract Documents, the Owner shall furnish the Contractor all surveys of the property necessary for the Work, but the Contractor shall lay out the Work.

ARTICLE 4 – CONTRACTOR

Section 4.01 - Representations of Contractor

The Contractor represents and warrants that:

- A. It is financially solvent and is experienced in and competent to perform the Work, and has the staff, manpower, equipment, and Subcontractors available to complete the Work within the time specified for the Contract Sum.
- B. It is familiar with all applicable federal, state, and local laws, ordinances, orders, rules, regulations, (including, to the extent practicable, the Marijuana Regulation and Taxation Act (MRTA)) and Good Design-Build Practice which may affect the Work.
- 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 Contractor'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. Contractor and its Subcontractors have taken steps necessary in accordance with the Contract Documents and Good Design-Build 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; (ix) all

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available Project geotechnical, hazardous materials, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations; and (x) except as set forth in the Project Schedule, the continuous, regular, and uninterrupted operation of the Facility. Contractor 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 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 Construction Manager.
- F. It will comply with all applicable local, state, and federal rules, the Lease as it relates to improvements to be made by the Owner, Good Design-Build Practice, and all applicable construction standards and accrediting agencies and organizations.
- G. To the best of Contractor'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 Contractor; (ii) the ability of Contractor 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. Contractor is in good standing with any 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. Contractor is experienced in the methods of design, engineering, installation, management and construction contemplated for Contractor's Work on this Project and other major projects of this nature, scope, magnitude, and quality. Contractor 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. Contractor is fully informed as to all existing conditions and limitations, including local manpower/labor working arrangements and laws affecting Contractor, the Work, or the Project.

- N. Contractor agrees and acknowledges that as a result of the above representations and warranties, claims for increases to the Contract Sum and/or Project Schedule resulting from Contractor's failure to familiarize itself with the Site, the Project, or the Contract Documents shall be deemed waived and any plea of ignorance by Contractor 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 Contractor from fulfilling all requirements of the Contract, nor shall it be the basis for any claim for an increase to the Contract Sum or Project Schedule.

Section 4.02 - Errors or Discrepancies

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

Section 4.03 – [Intentionally Omitted]

Section 4.04 - Meetings

The Contractor shall attend all meetings required by the Contract Documents, including all meetings as directed by the Construction Manager.

Section 4.05 - Supervision by Contractor

- A. Contractor shall not permit visitors on the Site without the prior consent of Construction Manager.
- B. The Contractor shall provide adequate and competent supervision for the duration of the Contract. During the course of on-Site work the Contractor shall provide a full-time on-Site superintendent who shall have full authority to act for the Contractor at all times. The superintendent must be able to read, write and speak English fluently, as well as communicate with the workers.
- C. If at any time the supervisory staff is not satisfactory to the Construction Manager, the Contractor shall, if directed by the Owner, immediately replace such supervisory staff with other staff satisfactory to the Construction Manager at no additional cost to the Owner.
- D. The Contractor shall remove from the Work any employee of the Contractor or of any Subcontractor when so directed by the Construction Manager.

Section 4.06 - Project Scheduling

- A. The Contractor shall provide a Project Schedule that provides all major milestones of the Project, including, but not limited to, design duration, construction start date, demolition, abatement, mechanical/electrical/plumbing installations, framing, drywall, and finishes, construction substantial completion and final certificate of occupancy.
- B. Review comments made by the Owner or the Construction Manager on the Project Schedule shall not relieve the Contractor from compliance with requirements of the Contract Documents. The Contractor shall be responsible for scheduling, sequencing, and performing the Work to comply with the requirements of the Contract Documents.

- C. The Contractor 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 Contractor from completing all the Work

Section 4.07 - Worker Identification and Site Access Control

All employees of the Contractor and every Subcontractor must comply with all site access control and security procedures prescribed by the Owner and/or Construction Manager 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.

Section 4.08 - Related Work

The Contractor 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.

Section 4.09 - Coordination with Separate Contractors

- A. The Owner may award other contracts to Owner's Separate Contractors for work which may proceed simultaneously with the execution of the Work. The Contractor shall coordinate the Contractor's operations with those of Owner's Separate Contractors as directed by the Owner. Cooperation shall be required in the arrangements for access, the storage of material, and in the detailed execution of the Work.
- B. The Contractor 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 Contractor's operations.
- C. Failure of a Contractor 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 Contractor of said progress and workmanship as being satisfactory for proper coordination with the Work.
- D. Where the Contractor performs Work in close proximity to work of Owner's Separate Contractors, or where there is evidence that Work of the Contractor may interfere with work of Owner's Separate Contractors, the Contractor shall assist in arranging space conditions to make satisfactory adjustment for the performance of the Work. If the Contractor performs Work in a manner that interferes with the work of Owner's Separate Contractors, the Contractor shall make changes necessary to correct the condition at no additional cost to the Owner.
- E. The Contractor shall render any assistance which the Owner may require with respect to any claim or action in any way relating to the Contractor'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 4.10 - Cooperation with Other Contractors

- A. Not Used.
- B. If the Owner determines that the Contractor is failing to coordinate its Work with the work of Owner's Separate Contractors as the Owner has directed:
 - 1. The Owner shall have the right to withhold any payments due under the Contract until the Contractor complies with the Owner's direction; and
 - 2. The Contractor shall assume the defense and pay on behalf of the Owner any and all claims or judgments or damages and any costs to which the Owner may be subjected or which the Owner may suffer or incur by reason of the Contractor's failure to promptly comply with the Owner's and/or Construction Manager's directions.
- C. If the Contractor 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 Contractor's Work, the Owner shall investigate the charge. If the Owner finds it to be true, the Owner shall promptly issue such directions to the applicable Owner's Separate Contractor with respect thereto as the situation may require. The Owner shall not be liable for any damages suffered by the Contractor by reason of the Owner's Separate Contractor's failure to promptly comply with the directions so issued by the Owner, or by reason of an Owner's Separate Contractor's default in performance.
- D. Should the Contractor 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 Contractor shall have no Claim against the Owner for said damage.
- E. Should any of Owner's Separate Contractors sustain damage through any act or omission of the Contractor or through any act or omission of a Subcontractor, the Contractor shall reimburse said Owner's Separate Contractors for all said damages and shall indemnify and hold the Owner harmless from all said Claims. The Owner's right to indemnification hereunder shall in no way be diminished, waived or discharged, by its recourse to assessment of liquidated damages as provided in the Contract Documents, or by the exercise of any other remedy provided by the Contract or law.
- F. The Owner cannot guarantee the responsibility, efficiency, unimpeded operations or performance of any of Owner's Separate Contractors. The Contractor acknowledges these conditions and shall bear the risk of all delays including, but not limited to, delays caused by the presence or operations of Owner's Separate Contractors and delays attendant upon any Project Schedule approved by the Owner and the Owner shall not incur any liability by reason of any delay.

Section 4.11 - Design

- A. Contractor's Design Work Responsibilities. Contractor's Design Work shall include, but not be limited to, the preparation of detailed architectural, civil, structural, mechanical, instrumentation, and electrical engineering designs, Specifications, Drawings, As-builts on a current basis, and estimates of product quantities sufficient to describe, detail and construct the Project properly and in accordance with the Concept Program, including design criteria to interface the Project with utilities, and work of other engineers and contractors, if any. All plans and specifications shall be submitted to the Owner for approval (with a copy thereof being delivered to the Construction Manager) prior to commencement of the construction-related work. Without limiting Contractor's obligations to complete all of the Work in accordance with the Contract Documents, Contractor shall perform all of the Design Work required to complete the Work in conformance with the Contract Documents, and solely for the purpose of

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illustrating the nature of Contractor's obligations under the Contract Documents, Contractor shall, in fulfilling its Design obligations hereunder, perform all of the detailed design Work as required to complete the Work in conformance with the Contract Documents.

1. Contractor's Design Proposal.

- a. Upon the Contractor's receipt a proposed Work Order from the Owner and/or Construction Manager, the Contractor shall prepare and deliver to Owner and/or Construction Manager on behalf of the Owner for its review Design Documents (the "Contractor Design Proposal") in sufficient detail as approved by the Owner and/or Construction Manager, as more fully described in Paragraph G. below. The Contractor's Design Proposal shall also include a proposed Contract Sum for which the Contractor agrees to undertake the Work (including both design and construction) necessary to complete the Project.
- b. Owner or Construction Manager's Design Professional will review the Contractor's Design Proposal for general design features, subject to Sections F and G, below. The Contractor is responsible for dimensions, quantities, accuracy, fit, adequacy of details, coordination with other trades, and meeting the requirements of the Contract Documents. The Contractor must request deviations from Contract Documents in writing and receive written approval from Owner or Owner's Design Professional before proceeding with such deviations. Any Work performed by Contractor that deviates from the Contract Documents prior to Owner's agreement for such deviation shall be performed at Contractor's sole risk. Contractor shall correct Defective Work identified by Owner at no additional cost to Owner.
- c. Any drawings required by the Contract to be submitted to Owner, Construction Manager or the Construction Manager's Design Professional for review shall be submitted by Contractor in an approved format as required in the Contract Documents without unreasonable delay and pursuant to the Project Schedule, and any Work affected thereby started prior to completion of review by Owner or Construction Manager shall be at Contractor's risk.
- d. Owner or Construction Manager may, from time to time, provide Contractor with information including, but not limited to, drawings, sketches, surveys, plans, calculations or other data, which must be independently verified by Contractor. Contractor must promptly notify Owner of any identified discrepancies in Owner-supplied documents.

2. Maintenance of Drawings and Specifications. In order for Owner and Construction Manager to verify that the Work is proceeding in accordance with Contract Documents, the Contractor shall maintain a complete and up-to-date set of drawings and specifications on the Site and shall at all times give Owner and Construction Manager access thereto.

- a. Every sheet of Contractor's Design 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.
- b. 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.

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- c. The Contractor shall review the As-builts with the Owner and Construction Manager at the request of the Owner or Construction Manager to demonstrate that the Contractor is fully and accurately recording all changes that have occurred.
- d. 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-builts shall be revised to include all changes made and complete and current Specifications shall be transmitted to Owner and Construction Manager.
- e. Upon completion of documents, the Contractor and its design professional 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.
- f. Prior to the Owner's issuance of a Certificate of Substantial Completion, the Contractor shall furnish to the Owner certified "As-built" mylars of the construction work and CADD disks. As-built mylars shall contain the stamp of the licensed New York State design professional. Each mylar 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."

- B. Quality and Completeness. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, Drawings, Specifications and other design professional services. Contractor shall be responsible for the quality, completeness, accuracy, and coordination of Design Documents. Contractor shall provide design services that meet all laws. Contractor shall provide for all testing, including performance testing, and inspections required by Good Design-Build Practice and by governmental agencies having jurisdiction over the Project.
- C. Design Standards. Contractor hereby warrants that all design performed as part of the Work shall be performed in accordance with the applicable standard of care and diligence normally practiced by design and construction firms performing services of a similar nature in existence at the time of performance of the work or services for the design-build industry of the United States, Good-Design-Build Practice, laws, applicable permits, and the requirements of the Contract Documents.
- D. Designer of Record. Prior to the commencement of Work, Contractor shall designate an "Engineer of Record" or "Architect of Record," as appropriate, which Person shall be reasonably acceptable to Owner. All Design Documents shall be sealed by a State of New York licensed Professional Engineer (P.E.), Architect, or licensed discipline engineer, as required. The Engineer or Architect of Record shall bear the sole responsibility for the preparation, completion and coordination of any Design Documents and specifications required for the Work.
- E. Review Not Approval. No inspection or review by Owner, Construction Manager, or Owner's Separate Contractors ("Owner-Reviewed Information") 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

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Documents, or constitutes a modification to any of the requirements of the Contract Documents. Nor shall any such inspection or review by Owner, Construction Manager, Owner's Representative, or other owner authorized parties relieve Contractor 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 Contractor from any liability or responsibility for injuries to persons or damage to property.

- F. The Contractor shall, without additional compensation, cause Contractor or its design professional Subcontractors to correct any errors or deficiencies in the Design Work of the Contractor or its design professional Subcontractors. Neither Owner's review, approval or acceptance of, nor payment to the Contractor for any of its or its design professional Subcontractors 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 Contractor's or its design professional Subcontractors' performance or non-performance of the Design Work or their failure to comply with any provision of the Contract Documents, and Contractor 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.
- G. Design Phase Submission: The Design-Builder shall provide to the Owner and Construction Manager the Contractor's Design Proposal sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Contract Documents. The Contractor's Design Proposal shall also include design-related information necessary to confirm code compliance of the proposed design. Upon the Owner's and/or Construction Manager's approval of the Contractor's Design Proposal, the parties shall execute a Work Order for the Project.
- H. Design Phase Services. Throughout the course of the Design Work, Contractor shall:
1. attend coordination meetings with the Owner and Construction Manager as required,
 2. develop a series of alternate solutions that explore a full range of building and site development possibilities including alternative mechanical, electrical, and structural considerations, floor to floor height, major building materials;
 3. establish a basic Project strategy by addressing critical relationships between program elements (e.g., building core, parking garage, bridge connection, if applicable);
 4. design the exterior window opening layout and column layouts;
 5. perform preliminary analysis of structural, HVAC, plumbing and electrical requirements;
 6. select in consort with the Owner, the overall solution, or combination of solutions which best address the needs of the Owner; and
 7. provide minutes of all meetings and reports of all reviews and comments received from others. Meetings shall be held at reasonable intervals or as directed by Owner and/or Construction Manager.

Section 4.12 - Owner Reviews – Approval of Contractor's Design Proposal; Construction Documents

- A. The Contractor's Design Proposal submitted by the Contractor shall be accompanied by a list identifying in detail each and every instance where the Contractor's Design Proposal deviates from

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the Scope of the Work, design criteria and architectural intent of the Concept Program (each, a "Deviation List"). The Contractor must request deviations from Contract Documents in writing and receive written approval from Owner or Construction Manager's Design Professional before proceeding with such deviations. Any Work performed by Contractor that deviates from the Contract Documents prior to Owner's agreement for such deviation shall be performed at Contractor's sole risk. Contractor shall correct Defective Work identified by Owner at no additional cost to Owner.

- B. The Owner and/or Construction Manager shall have the option, prior to proceeding with any Owner review, to return the Contractor's Design Proposal for the following reasons: (i) if such Contractor's Design Proposal or any part thereof, in the reasonable opinion of the Owner and/or Construction Manager and as described by the Owner and/or Construction Manager in a written Notice delivered to the Contractor, is not developed to the extent required by this Section 4.12; or (ii) to require further development, as described in reasonable detail in the written Notice from the Owner and/or Construction Manager.
- C. Subsequent to the Owner's and/or Construction Manager's approval of the Contractor's Design Proposal and the Effective Date of the final Work Order, the Design-Builder shall provide Construction Documents for review and written approval by the Owner and/or Construction Manager. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Contract Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:
1. be consistent with the approved Contractor's Design Proposal;
 2. provide information for the use of those in the building trades; and
 3. include documents customarily required for regulatory and governmental agency approvals.

The sufficient and satisfactory completion of the Construction Documents in accordance with the Contract Documents shall be the sole responsibility of the Contractor, subject in all instances to the approval of the Owner.

- D. Notwithstanding anything to the contrary contained in this Contract including, without limitation, the document precedent provisions of General Conditions, Section 2.07, if the Contractor fails to specifically identify in a Deviation List any such deviation with the Scope of Work and Concept Program, 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 Contractor 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 and Concept Program, 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 Concept Program shall include, without limitation, any element in a Contractor's Design Proposal that does not conform with the Scope of Work or and Concept Program. The Parties acknowledge and agree that in the course of negotiating the applicable Work Order that the Parties: (i) have progressed the design from the Scope of Work or and Concept Program; (ii) have memorialized such progress in the Contract Documents; and (iii) will continue to progress the design through design development and Construction Documents. The Parties further agree that (i) the recorded design progress conforms with the Scope of Work and Concept Program, and (ii) to the extent that the Construction Documents continue to so conform with the Scope of Work and Concept Program, the Owner will not unreasonably withhold its approval of the Construction Documents.

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- E. The Owner's and/or Construction Manager'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 Contractor's Design Proposal or Construction Documents with the Contract Documents, which such determination shall be the responsibility of the Contractor.
- F. The Contractor shall cause any of its design professional Subcontractors, to modify or revise the Construction Documents to the extent necessary to comply with or incorporate, as applicable, the comments, directions and recommendations of the Owner and/or Construction Manager which are contained in the Owner's and/or Construction Manager's comments. The Contractor shall not, however, be entitled to an adjustment to the Contract Sum, or any extension of time in the Project Schedule, to compensate the Contractor for complying with the comments, directions, and recommendations of the Owner and/or Construction Manager, unless such comments, directions, or recommendations involve a change in the Scope of Work or a delay to the Project Schedule; provided, however, the Contractor shall not be entitled to any such adjustments if such comments, directions, or recommendations arise as a result of a failure of the Contractor's Design Proposal 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 seven (7) days following the receipt of any Owner's and/or Construction Manager's comments, the Contractor shall Notify the Owner and/or Construction Manager in writing (such Notice being referred to as an "Interim Design Verification Request") whether, in the Contractor's reasonable judgment, the comments, directions or recommendations contained therein involved a change in the Scope of Work (resulting in an "Interim Design Change"), and are not as a result of a failure in the Contractor's Design Proposal 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 Contractor 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 Contractor fails to provide an Interim Design Verification Request within the seven (7) day period referenced in this Section, then the Contractor shall be deemed to have represented that the content of the Owner's and/or Construction Manager's comments does not present an Interim Design Change (and that the Contractor is thereby not entitled to an adjustment in the Contract Sum or the Project Schedule). In such event, the Contractor shall incorporate the content of the Owner's and/or Construction Manager's comments into the corresponding Contractor's Design Proposal, and upon complete incorporation of the same, the Owner and/or Construction Manager shall issue a written approval of the Contractor's Design Proposal.
- H. Upon receipt of an Interim Design Verification Request, the Owner and/or Construction Manager shall have the following options:
 - 1. The Owner and/or Construction Manager may modify, revise or eliminate those items the Contractor asserts would constitute an Interim Design Change, to the extent the Owner and/or Construction Manager concurs with the Contractor, in order to avoid any adjustment in the Contract Sum or adjustment to the Project Schedule. In such event, the Contractor shall incorporate the content of the Owner's and/or Construction Manager's comments, as revised to reflect any of the Owner's and/or Construction Manager's additional modifications, revisions, and eliminations, and upon complete incorporation of the same, the Owner and/or Construction Manager shall issue a written approval of the corresponding Contractor's Design Proposal.
 - 2. The Owner and/or Construction Manager may reject an Interim Design Verification Request by written notice to the Contractor. In such event, the Contractor shall incorporate the content of the

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Owner's and/or Construction Manager's comments into the corresponding Contractor's Design Proposal, and upon complete incorporation of the same, the Owner and/or Construction Manager shall issue a written approval of corresponding Contractor's Design Proposal.

3. The Owner and/or Construction Manager may accept all or any portion of the Contractor'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 and/or Construction Manager. In such event, the Contractor shall incorporate the Owner's and/or Construction Manager's review (as revised to reflect such revisions to such report as are necessary to incorporate the portion of the Contractor's Interim Design Verification Request accepted by the Owner and/or Construction Manager), and upon complete incorporation of the same, the Owner and/or Construction Manager shall issue a written approval of the corresponding Contractor's Design Proposal. Any portion of an Interim Design Verification Request not accepted by the Owner and/or Construction Manager shall be deemed rejected in the manner provided in Subsection G.2 of this Section 4.12.
- I. The Contractor shall provide Notice to Owner and/or Construction Manager, in writing, of any dispute Contractor has regarding the Owner's and/or Construction Manager's rejection of an Interim Design Verification Request or portion thereof. Such Notice shall be given no later than seven (7) days following the Contractor's receipt of the Owner's and/or Construction Manager's rejection. Such dispute shall be resolved in accordance with the terms and provisions of General Conditions, Article 22 of this Contract; provided, however, the Contractor acknowledges and agrees that the Contractor's Design Proposal, as revised in accordance with the requirement set forth above in Subsection G. of this Section 4.12, shall be then governing documents and that the Contractor shall continue to perform the Work and shall do so in accordance with the then governing documents. If the Contractor fails to provide written Notice of its objection to the Owner's and/or Construction Manager's rejection of an Interim Design Verification Request, or portion thereof, within the preceding seven (7)-day period, then the Contractor shall be deemed to have waived any claim for an adjustment in the Contract Sum or the Project Schedule as a result of the Owner's and/or Construction Manager's rejection of the Interim Design Verification Request or portion thereof. In such event, the Contractor shall incorporate the content of the Owner's and/or Construction Manager's comments and any portion of an Interim Design Verification Request accepted by the Owner and/or Construction Manager into the corresponding Contractor's Design Proposal as provided in the preceding Subsection G. of this Section 4.12.
 - J. Once the Construction Documents are completed reviewed and approved by the Owner and/or Construction Manager as provided in this Section 4.12, they shall thereupon become part of the Contract Documents. For purposes of this Contract, (a) [the Contractor's Design Proposal shall only be deemed completed upon the written concurrence of the Contractor and the Owner and/or Construction Manager, 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 the [completed Contractor's Design Proposal] or Construction Document is reviewed and approved by way of the process in this Section 4.12, it may not thereafter be modified, altered, or changed without the Owner's and/or Construction Manager's prior written approval
 - K. The Owner's and/or Construction Manager's review, evaluation, comment and approval of Contractor's Design Proposal or any Construction Documents, any submittals, or any other documents prepared by or on behalf of the Contractor shall be solely for the purpose of the Owner and/or Construction Manager 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 Contractor, any Subcontractor or any other third party as a substantive review thereof. The Owner and/or Construction Manager, in reviewing, evaluating, commenting on and approving the Contractor's Design Proposal and the 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 Contractor.

ARTICLE 5 – MATERIALS AND LABOR

Section 5.01 - Contractor's Obligations

- A. The Contractor 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 and/or Construction Manager.
- B. Contractor shall, and shall cause its Subcontractors to, procure and pay for, in Contractor'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 Contractor and Subcontractor labor; materials; equipment; tools; construction equipment; Construction Aids; all Contractor Permits; Contractor 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. Contractor 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, Contractor shall comply with manufacturer's instructions and printed directions for any materials, equipment, or related systems supplied by such manufacturer.
- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor 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 Contractor, its Subcontractors or material suppliers, or by any of the trades working in or about the Site, or by other Contractors, their Subcontractors or material suppliers pursuant to other contracts shall not be allowed. Any violation by the Contractor of this requirement may in the sole judgment of the Owner be considered in default and for the Owner to take action against the Contractor as set forth in Article 11 - Termination or Suspension, or such other action as the Owner may deem proper. Contractor 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 Contractor 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 Contractor or any Subcontractor.

Section 5.02 - Means and Methods

- A. Unless otherwise provided in the Contract Documents, the Means and Methods shall be such as the Contractor may choose subject to the Owner's and/or Construction Manager's right to reject the Means and Methods proposed by the Contractor, which in the opinion of the Owner and/or Construction Manager:
 - 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. The Owner's and/or Construction Manager's approval of the Contractor's Means and Methods, or its failure to exercise its right to reject such Means and Methods, shall not relieve the Contractor of its obligation to complete the Work, nor shall the exercise of such right to reject create a cause of action for damages.

Section 5.03 - Contractor's Title to Materials

- A. No materials or supplies for the Work shall be purchased by the Contractor 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 Contractor warrants that the Contractor has full, good and clear title to all materials and supplies used by the Contractor 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 5.03 C, below.
- B. For all materials, supplies or equipment that are stored at a location other than the Site, Owner and/or Construction Manager 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, Contractor shall comply with General Conditions, Sections 8.01 (E) and (F) 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 Contractor.
- C. All materials, equipment and articles that become the property of the Owner shall be new unless specifically stated otherwise.

Section 5.04 - 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 Construction Manager, the material, article or equipment so proposed is of equal quality, substance and function and the Contractor shall not Provide, Furnish or Install any said proposed material, article or equipment without the prior

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written approval of the Construction Manager. 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 Contractor.

- B. Any costs savings to an approved comparable product realized by the Contractor shall be shared equally between the Owner (50%) and Contractor (50%).
- C. Where the Owner and/or Construction Manager, pursuant to the provisions of this Section, approves a product proposed by the Contractor 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 Contractor at the cost of the Contractor and shall be subject to the approval of the Owner.
- D. No substitution will be permitted which may result in a delay to the Project.

Section 5.05 - Quality, Quantity and Labeling

- A. The Contractor 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 Contractor shall develop and implement quality control plans to assure itself and the Owner that all Work performed by the Contractor and its Subcontractors complies fully with all contract requirements, and shall submit the plans to the Owner as required by the Contract. See the Submittals Section of the General Requirements. The Contractor’s quality control plans shall be independent of any testing or inspection performed by or on behalf of the Owner.

Section 5.06 - [Intentionally Omitted]

ARTICLE 6 – SUBCONTRACTS

Section 6.01 - Subcontracting

- A. The Contractor may utilize the services of Subcontractors, subject to the provisions of the Contract Documents.
- B. The Contractor shall submit to the Owner and/or Construction Manager the name of each proposed Subcontractor as required by the Contract. The Owner and/or Construction Manager reserves the right to disapprove any proposed Subcontractor and such disapproval shall not result in additional cost to the Owner. If requested by the Owner and/or Construction Manager, the Contractor shall provide copies of any and all Subcontracts related to the Work.
- C. The Contractor’s use of Subcontractors shall not diminish the Contractor’s obligation to complete the Work. The Contractor shall control and coordinate the Work of Subcontractors and be fully responsible

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for the acts and omissions of Subcontractors, and of persons either directly or indirectly employed by Subcontractors. The Contractor shall be responsible for all guarantees and warranties provided by Subcontractors.

- D. The Contractor shall be responsible for requiring each Subcontractor, to extent of the Work to be performed by such Subcontractor, to be bound to the Contractor by all the terms, conditions and requirements of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner.
- E. Nothing contained in the Contract or any Subcontract shall create any contractual relationship between Subcontractors and the Owner.
- F. In selecting a Subcontractor, the Contractor shall consider whether the Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration. The Contractor shall not subcontract with any Subcontractor 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 Contractor shall not subcontract with any Subcontractor on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law.
- G. Prior to or after award of the Contract, if requested by the Owner, the Contractor shall require a Subcontractor to submit a NYS Vendor Responsibility Questionnaire and a Vendor Questionnaire in the form approved by the Construction Manager ("Vendor Questionnaire").
- H. The Contractor shall submit a NYS Vendor Responsibility Questionnaire and a Vendor Questionnaire to the Owner for each Subcontractor proposed for the Work with a subcontract value of one million dollars (\$1,000,000) or greater, unless otherwise requested by Owner or Construction Manager.
- I. After execution of the Contract, the Owner will provide to the Contractor copies of the Owner's Code of Business Ethics Certification form. The Contractor is required to have each Subcontractor, at all tiers, complete the form prior to the Subcontractor beginning work. The completed forms are to be filed by the Contractor with the Owner and Construction Manager. A failure to comply with this requirement may result in the Subcontractor(s) being removed from the Project Site.

ARTICLE 7 – CHANGES IN THE WORK

Section 7.01 - Changes

- A. Without invalidating the Contract, the Owner, in writing, may order changes in the Work by altering, adding or deducting from the Work of the Contract. For all approved changes in the Work, the Owner (or the Construction Manager on behalf of the Owner) shall issue to the Contractor, a Notice to Proceed directing Contractor to proceed with the changed Work followed by an executed Change Order form, both documents shall be processed through Contract Manager, and both forms shall include a change request number. The Owner and/or Construction Manager at its discretion may direct the Contractor to proceed with the changed Work prior to the issuance of an executed Change Order, and, subject to Contractor's rights under General Conditions, Articles 10 and 22, Contractor must diligently proceed with such Work. Where the Contractor rejects Owner's decision regarding the Work related to the proposed Change Order, the Owner and/or Construction Manager at its discretion may direct the

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Contractor to proceed with the Work, and, subject to Contractor's rights under General Conditions, Articles 10 and 22, Contractor must diligently proceed with such Work. Owner will not accept any Contractor alteration to these forms, and no payment shall be due the Contractor until said forms are issued and executed by the Owner. Owner is not required to accept Contractor's cost estimate for the changed Work until the Contractor's cost estimate has been priced in a manner consistent with the requirements of the Contract Documents, and reviewed and approved by the Owner and/or Construction Manager in accordance with the Construction Manager's procedures. If the Contractor believes that the Critical Path related to the Substantial Completion date is affected by a change, Contractor shall submit an appropriate schedule fragnet demonstrating the prospective changes to the affected milestones.

1. **Change Order Requests Negotiations.** Owner and/or Construction Manager shall negotiate in good faith to agree on the impacts to the Contract Sum, the Work, the Project Schedule, the Contract Time, or other applicable provisions of the Contract Documents for Owner-initiated Change Order requests and Contractor-initiated Change Order requests.
 2. **Owner-initiated Forced Change Orders.** If the Parties cannot agree on the adjustment to be made in the Contract Sum, the Work, the Project Schedule, the Contract Time, or other applicable provisions of the Contract Documents, as a result of a proposed Change Order, then (i) with respect to Owner-initiated changes and if the Contractor disagrees with the changes in the Work, the Owner may issue a Forced Change Order in an amount that DASNY believes to be fair and reasonable for the work performed, and Contractor must perform the changed Work and proceed to diligently execute such Work as described in the Forced Change Order promptly upon written authorization from Owner and/or Construction Manager.
 3. **Continuation of Change Order Work.** Contractor's failure to proceed with any Change Order Work authorized in writing by Owner and/or Construction Manager shall be an event of default. In no event shall negotiations under this Article impact the Project Schedule. The Parties shall resolve all disputes regarding Change Order requests pursuant to Articles 10 and 22.
- B. The Contract Sum may be increased or decreased 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 Article. Unit prices are limited to the quantities specified in the Contract Documents or Change Order. Quantities greater than specified in the Contract Documents or Change Order are subject to negotiations by the Owner and/or Construction Manager.
 2. By estimating the fair and reasonable cost of the changes in the Work or deleted Work.
 3. By determining the actual cost of the changes in the Work and considering the following:
 - a. Labor, including all wages, required wage supplements and insurance required by law, paid to employees below the rank of superintendent directly employed at the Site. Minimum wages are the prevailing rate of wages defined by the NYS Department of Labor. Actual wages in excess, paid by the Contractor, may be considered by the Owner and/or Construction Manager.
 - b. Premiums or taxes paid by the Contractor 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.

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- c. Premiums for liability insurance associated with Change Order Work.
 - d. Materials associated with Change Order Work.
 - e. Equipment, excluding hand tools, which in the judgment of the Owner and/or Construction Manager, would have been or will be employed in the Work. The Owner and/or Construction Manager may employ the use of rental rates it deems most appropriate from the “Green Book”, the “Blue Book”, or from the Associated General Contractors of America. 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 Contractor-controlled or loosely affiliated companies. It is the duty of the Contractor to utilize either rented or self-owned equipment that is of a nature and size appropriate for the Work to be performed. The Owner and/or Construction Manager 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 changes in the Work.
 - f. 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 “Blue Book” would be added to this rate to establish the billable rate.
- C. For each proposed change in the Work, the Contractor shall submit to the Owner and/or Construction Manager, within the time frame provided by the Owner and/or Construction Manager, the following information:
1. A detailed proposal of labor, material and equipment costs for the proposed changes in the Work. The Contractor and Subcontractors shall use the Owner’s Contractor and Subcontractor proposal forms, which are available directly from the Construction Manager’s website <http://www.dasny.org>.
 2. The Contractor’s and Subcontractor’s proposals must provide a notarized statement as follows:

“I hereby certify that the value for the labor, material and equipment that comprise the proposals, 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 Owner and that no overhead and profit are included in the proposals for changes to the work performed by any subcontractor or for any major equipment or material supplier that is an affiliate of this firm.”
 3. Signed and notarized labor rate worksheet to determine hourly rates for each classification of worker associated with the proposed changes in the Work. The Contractor shall use Construction Manager’s labor rate worksheets, which are available directly from from the Construction Manager’s website <http://www.dasny.org>. The Contractor agrees to provide additional documentation to further verify labor and material costs at the Owner’s and/or Construction Manager’s request.
 4. Narrative and fragnet schedule, which describes the impact on the Critical Path of the Project Schedule in duration days associated with the proposed changes in the Work.

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5. Overhead and Profit calculated based upon 10% of the Contractor's labor, material and equipment costs for the proposed changes in the Work as set forth in subparagraph C.1. above and, if the change order involves labor, material and equipment costs for a Subcontractor to Contractor, overhead and profit based upon 10% of the Subcontractor's labor, material and equipment costs for the proposed changes in the Work as set forth in subparagraph C.1. above, plus an additional 5% of the same costs for Contractor's Overhead and Profit.
- D. Each Contractor's and Subcontractor's proposals shall be reviewed by the Owner consistent with the requirements of Article 7 – Changes in the Work. Upon the Owner's approval, and with appropriate approval authority, the Owner shall issue, to the Contractor, the Notice to Proceed and execute the Change Order form between the Contractor and the Owner.
- E. Any information representing the value of the Work performed, materials supplied and equipment utilized contained in the Contractor's and Subcontractor's proposals that constitutes False Representation may subject the undersigned party to criminal charges.
- F. The compensation specified in the executed Change Order includes full payment for the changes in the Work covered thereby, and the Contractor waives all rights to any other compensation for the changes in the Work, damage or expense.
- G. The Contractor shall furnish satisfactory bills, payrolls and vouchers 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 all Subcontractors. This information shall not be used as a basis to reduce compensation for Change Order work items for which the Owner has accepted the Contractor's proposal consistent with paragraph "C" of this section, providing the work was performed in a manner consistent with the accepted proposal.
- H. At Substantial Completion, the Owner may address increased bonding costs which may have resulted from changes in the Work. The Contractor must provide satisfactory proof and paid invoice of increased costs. The Owner will not pay overhead and profit on any increased costs for bonding.
- I. At Substantial Completion, the Owner may address increased insurance costs which may have resulted from changes in the Work. The Contractor must provide satisfactory proof and paid invoice of increased costs. The Owner will not pay overhead and profit on any increased costs for insurance.

[Section 7.02 – [Intentionally Omitted]

Section 7.03 - Deduct Change Order

The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a decrease in the Contract amount shall be as determined by the Owner and/or Construction Manager on behalf of Owner.

ARTICLE 8 – PAYMENT

Section 8.01 - Provision for Payment

- A. The Contractor shall complete and submit to the Owner and/or Construction Manager for review, the detailed Schedule of Values (*a form in the Contract Documents, which establishes the minimum level*

of payment detail to formulate an initial Application for Payment) included in the Contract Documents prior to the Contractor's first Application for Payment (*a form provided by Construction Manager which provides certification by the Contractor for payment*). It is understood and the Contractor acknowledges that the Schedule of Values is included as an administrative tool for the purpose of illustrating a format and minimum level of detail required, and shall not be considered as delineating the Contractor's scope of Work. The Owner may require the Contractor to revise its Schedule of Values. Further, the Owner and/or Construction Manager reserves the right to accept only those cost distributions which, in the Owner's and/or Construction Manager's opinion, are reasonable, equitably balanced and correspond to the estimated quantities in the Contract Documents.

- B. The Owner may make a partial payment to the Contractor on the basis of an approved Contractor's pencil copy (*a form provided by Construction Manager which establishes a billing request from the Contractor and when approved by the Construction Manager and the Owner, formulates the Application for Payment*) billing request of the Work performed during each preceding business month. The Owner shall retain five percent (5%) of the amount of each said billing request.
- C. 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.
- D. In preparing the Contractor's pencil copy 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 and/or Construction Manager shall prescribe, may be taken into consideration. All costs related to the storage of materials are the sole responsibility of the Contractor. The Contractor shall comply with the Owner's requirements and forms to be included with the billing request for such material.

Section 8.02 - Substantial Completion and Reduction of Retainage

- A. After the Owner has determined that the Work has met the requirements for Substantial Completion, as evidence by the executed Notice of Substantial Completion, the Contractor shall submit to the Owner and Construction Manager, for Construction Manager's and Owner's approval, a detailed estimate of the value of the known remaining items of Work as set forth by the Owner and a schedule for the completion of said items of Work. The Owner shall review that estimate and make the final determination.
- B. Subject to the provisions of General Conditions, Section 8.05 hereof, the Owner, when all the Work is at Substantial Completion, shall pay to the Contractor the balance due the Contractor pursuant to the Contract less:
 - 1. Two (2) times the value of any remaining items of Work to be completed or corrected.
 - 2. An amount necessary to satisfy any and all Claims, liens or judgments against the Contractor.
- C. As the remaining items of Work are completed and accepted by the Owner, the Owner shall pay the appropriate amount pursuant to the duly completed and submitted monthly billing request.
- D. 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 this Section.

- E. The Contractor may request from the Owner a reduction of retainage upon Substantial Completion of the Work or when a phase of the Work is accepted by the Owner.
- F. The acceptance by the Contractor of the first payment of reduction of retainage shall be and shall operate as a release to the Owner of all Claims by and all liability to the Contractor 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. No payment, final or otherwise, shall operate to release the Contractor or the Contractor's sureties from any obligations under this Contract or the performance or payment bonds.

Section 8.03 - 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 Contractor submits to the Owner a General Release from the Contractor 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 Contractor or the Contractor's sureties from any obligations under this Contract or the Performance or Payment bonds.

Section 8.04 - Liens

Upon the Owner's receipt of a lien, a sum which shall be one and one-half (1 1/2) times the amount stated to be due in the notice of lien shall be deducted from the current payment due the Contractor. This sum shall be withheld until the lien is discharged. Upon Owner's request, Contractor shall provide waivers of lien acceptable to Owner for Contractors Subcontractors. Contractor shall also comply with any provisions of the Lease pertaining to liens filed against the leased premises.

Section 8.05 - Withholding of Payments

- A. The Owner may withhold from the Contractor any part of any payment as may, in the judgment of the Owner, be necessary:
 - 1. To assure payment of just claims of any entity supplying labor, materials or equipment for the Work.
 - 2. To protect the Owner from loss due to Defective Work not remedied.
 - 3. To protect the Owner, 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 Contractor or Subcontractors.
 - 4. To assure payment of fines and penalties, that may be imposed on the Contractor pursuant to the provisions of the contract.
 - 5. To protect and make whole the Owner from a contractor's non-compliance to the requirements set forth in Article 15 – Insurance and Bonds.
 - 6. For damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work of the Contract in strict accordance with the Contract Documents.
 - 7. For breach by Contractor of any of its material obligations under the Contract Documents, including the costs to Owner of remedying the breach.

8. For damage to Owner's property arising from the performance of the Work or failure to perform the Work properly where Contractor has liability under the Contract.
 9. For Contractor's failure to provide required recovery plans, reports and updates as set forth in, or reasonably inferable from, the General Requirements and/or Contractor's failure to accelerate its Work, as required by the General Requirements, to meet the milestones in and maintain the Project Schedule.
- 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 Contractor.

Section 8.06 - Late Payment

If the Owner, upon Construction Manager's and Owner's receipt of all requested documentation with respect to any payment request, fails (subject to the provisions of Section 8.05 hereof) to make a payment within [60] days of such receipt, Contractor shall be subject interest on such amount at a rate of []% per year until paid.

Section 8.07 - Owner Liability

- A. The provisions of Article 8 are solely for the benefit of the Owner, and any action or non-action here under by the Owner shall not give rise to any liability on the part of the Owner.
- B. The Contractor shall comply with the requirements of Section 10.08 – Limitations on Actions.

ARTICLE 9 – TIME OF COMPLETION

Section 9.01 - Time of Completion

- A. The Work shall commence at the time stated in the Notice to Proceed or Work Order and shall be no later than the date of Substantial Completion specified in the Work Order. Notwithstanding anything to the contrary, a schedule submitted by the Contractor showing Substantial Completion earlier than that specified in the Contract shall not entitle the Contractor to any additional cost or an extension of time in the event the earlier date is not realized.
- B. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that Substantial Completion of the Work, as specified in the Contract, is an essential condition of the Contract.
- C. The Contractor agrees that the Work shall be prosecuted regularly, diligently and cooperatively with Owner's Separate Contractors at such rate of progress as shall ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for Substantial Completion of the Work described herein is reasonable.
- D. It is further agreed that time is of the essence for each and every portion of the Work. In any instance in which additional time is allowed for Substantial Completion of the Work, the new date of Substantial Completion established by said extension shall be of the essence.

- E. The date of Substantial Completion may be extended by a Change Order by the Owner.

ARTICLE 10 – CLAIMS AND DISPUTES

Section 10.01 - Notification of Claim

- A. A written notice of Claim shall be delivered to the Construction Manager’s designated contact by the Contractor within fifteen (15) working days after occurrence of the event giving rise to such Claim or within fifteen (15) working days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. Burden of proving the Construction Manager’s timely receipt of Claim shall be the Contractor’s responsibility. Submission of the notice to any other individual other than Construction Manager’s designated contact shall not satisfy the notice requirement.
- B. Unless otherwise approved by Owner, within thirty (30) working days of the submission of the initial notice of Claim, the Contractor shall substantiate the Claim and document the nature of the Claim and provide supporting cost data, Contractor’s original cost estimate, a schedule fragnet demonstrating alleged impact on the Critical Path of the Project Schedule, the correlation to the Claim, and a Contractor affidavit stating the following:

“I hereby certify that the value assigned the work, material and equipment that comprise the Claim, represents the actual value of said work, material and equipment pursuant to the Contract between the undersigned and the Owner and that no overhead and profit are included in the proposals related to this Claim for the work performed by any subcontractor or for any major equipment or material supplier that is an affiliate of this firm.”

1. The Contractor shall provide, every thirty (30) days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.
 2. Failure of the Contractor to comply and submit to all of the requirements stated in this Section 10.01 shall result in the rejection of Claim.
- C. The Contractor shall provide the Construction Manager one (1) paper copy of the documented Claim and mail two (2) paper copies of the documented Claim to:

Dormitory Authority – State of New York
Project Controls Unit
515 Broadway
Albany, NY 12207-2964

- D. The value of any Claim, if allowed, shall be determined by the methods described in Article 7 – Changes in the Work.
- E. Any information representing the actual value of the Work and material contained in the Claim that constitutes False Representation, may subject the undersigned party to criminal charges.

Section 10.02 - Claim for Extra Work

- A. If the Contractor wishes to make Claim for an increase in the Work of the Contract, or that any action or omission of the Owner is contrary to the terms and provisions of the Contract, a Claim shall be filed in accordance with the procedure herein.
- B. No payment for Extra Work shall be allowed unless directed by a Notice to Proceed executed by the Owner. Failure of the Owner and/or Construction Manager to respond in writing to a written request for additional time within thirty (30) days shall be deemed a denial of the request. Denial of additional time will not entitle the Contractor to additional costs
- C. The Contractor's failure to comply with any or all parts of this Article 10 shall be deemed to be:
 - 1. A conclusive and binding determination on the part of the Contractor that a Notice to Proceed, Work, action or omission does not involve Extra Work.
 - 2. An absolute waiver by the Contractor of all claims for additional compensation, costs, charges, expenses or damages as a result of a Notice to Proceed, Work, action or omission.

Section 10.03 – [Intentionally Omitted]

Section 10.04 - Claim for Additional Cost

If the Contractor wishes to make Claim for an increase in the Contract Sum, a Claim must be filed in accordance with the procedure herein. Denial of additional costs may not entitle the Contractor to additional time.

Section 10.05 - Continuance of the Work

Unless otherwise agreed in writing, the Contractor shall proceed diligently with said Claim and with the performance of the Work. The Contractor agrees that no default, act or omission of the Owner and/or Construction Manager shall constitute a material breach of Contract entitling the Contractor to cancel or rescind the same or to suspend or abandon the performance of the Work.

Section 10.06 - Not Used.

Section 10.07 - Resolution of Claim

- A. Any resolution or determination by the Owner of a Claim shall be final, binding and conclusive on the Contractor. Within ten (10) working days after receiving notice of the Owner's resolution, the Contractor may file a written statement with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination.
- B. At its discretion, the Owner may resolve any Claim without waiving its rights under the Contract.

Section 10.08 - Limitation on Actions

- A. No action or proceeding shall lie in favor of or shall be maintained by the Contractor 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 Contractor's final Application for Payment, if no Notice of Substantial Completion is issued.
 3. The date of termination if the Contract is terminated by the Owner..
- B. In the event that a judgment is obtained against the Owner, the Contractor agrees to accept no more than three percent (3%) interest, per annum on the judgment amount.

Section 10.09 - Waiver of Certain Causes of Action

No action or proceeding shall lie or shall be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based upon the Contract, relating to the giving of notices or information.

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 Contractor or by any Subcontractor, the Owner and/or Construction Manager may serve written notice upon the Contractor and upon the Contractor's surety, if any, of the Owner's intention to terminate the Contract. Such notice shall contain the reasons for the intention to terminate the Contract upon a date specified by the Owner. The Contractor will be allowed an opportunity to show why its Contract should not be terminated for cause. If the violation or delay shall not cease or arrangements satisfactory to the Owner are not made, the Contract shall terminate upon the date so specified by the Owner.
- 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 Contractor and Contractor's surety shall be liable to the Owner for all costs incurred by the Owner.
- C. In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to 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. Any such termination shall be effected by delivering to the Contractor a 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 Contractor shall act promptly to minimize the expenses resulting from the termination.
- B. The Owner shall pay the Contractor for Work of the Contract performed by the Contractor and accepted by the Owner for the period extending from the date of the last approved Application for Payment up to the effective date of the termination, including retainage, pursuant to Article 7 – Changes in the

Work. In no event shall the Contractor be entitled to compensation in excess of the total consideration of the Contract.

- 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 Contractor, that the Owner will have the Work of the Contract or any part thereof, performed by 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 Contract amount.

Section 11.04 - Suspension of Work

- A. The Owner and/or Construction Manager acting as agent on behalf of the Owner may order the Contractor in writing to suspend, delay or interrupt performance of all or any part of the Work for a reasonable period of time as the Owner and/or Construction Manager may determine. The order shall contain the reason or reasons for issuance which may include, but is not limited to, latent field conditions, substantial program revisions, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired insurance, or acts of God.
- B. Upon receipt of a suspension order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such work from loss or damage.
- C. The Contractor 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 Contractor, the Owner may consider requests for compensation provided that the justification is submitted in accordance with Article 10 – Claims and Disputes.
- D. The date of Substantial Completion of the Work may be extended by change order to compensate the Contractor for the time lost by the suspension, interruption or delay.

Section 11.05 - Stop Work

- A. Should the Contractor fail to comply with the terms of the Contract, the Owner and/or Construction Manager, at any time, by written order to the Contractor, can require the Contractor 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 Contractor 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 Contractor has successfully remedied the cause of the Stop Work Order.
 - 2. Invoke any other provision of Article 11 – Termination or Suspension.
- B. The Contractor shall not be entitled to an increase in time or costs as a result of the Stop Work Order.

Section 11.06 - Survival of Obligations

Notwithstanding any provisions of the Contract Documents, including the General Conditions and General Requirements, the termination of the Contract for any reason shall not relieve the Contractor of its obligations with respect to any contractual indemnity, guaranty or warranty to be provided to the Owner, Construction Manager or Landlord under 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, and the Contractor 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 and (2) shall not affect the obligations of the Contractor for Work which is not in accordance with the requirements of the Contract or other obligations of the Contractor under the Contract.

ARTICLE 13 – INSPECTION AND ACCEPTANCE

Section 13.01 - Access to the Work

The Owner and/or the Construction Manager shall at all times have access to the Work and the Contractor shall provide proper facilities for access.

Section 13.02 - Notice for Testing and Inspection

If the Contract Documents, the Construction Manager’s instructions, laws, rules, ordinances, or regulations require that any Work be inspected or tested, the Contractor shall give the Construction Manager a minimum of three (3) work days, unless otherwise specified, written notice of readiness of the Work for inspection or testing and the date fixed for said inspection or testing.

Section 13.03 - Reexamination of Work

Reexamination of any part of the Work may be ordered by the Owner and/or the Construction Manager, and if so ordered the Work must be uncovered by the Contractor. If said Work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of reexamination. If said Work is not found to be in accordance with the Contract Documents, the Contractor shall pay the cost of reexamination and replacement.

Section 13.04 - Inspection of Work

All Work, all materials whether or not incorporated in the Work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the Owner, the Construction Manager acting as agent on behalf of the Owner and/or any consultant or agent engaged by

either the Owner or Construction Manager, and the Owner and/or the Construction Manager shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which said Work, materials, processes of manufacture, and methods of construction are used. Any Work not approved by the Owner and/or the Construction Manager shall be reconstructed, made good, replaced or corrected immediately by the Contractor including all work of other Contractors destroyed or damaged by said removal or replacement. Rejected material shall be removed immediately from the Site. Acceptance of material and workmanship by the Owner and/or the Construction Manager shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.

Section 13.05 - Defective or Damaged Work

If, in the opinion of the Owner and/or the Construction Manager, it is undesirable to replace any Defective or damaged materials or to reconstruct or correct any portion of the Work damaged or not performed in accordance with the Contract Documents, the Contract amount shall be reduced by an amount, which in the judgment of the Owner, shall be deemed equitable.

Section 13.06 - Testing of Work

All materials and equipment used in the Work shall be subject to testing in accordance with the Contract Documents, accepted standards and Good Design-Build Practice to establish conformance with the Contract Documents and suitability for intended use or as directed by the Owner and/or the Construction Manager. Any Work covered or concealed without the approval or consent of the Owner and/or the Construction Manager, shall be uncovered for examination. No testing by the Owner and/or the Construction Manager or by a testing laboratory on behalf of the Owner relieves the Contractor of the responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the Contract Documents. The Owner and/or the Construction Manager may order additional testing for any test results below specified minimums. Additional cost for testing, professional services and any other expenses related to the additional testing shall be at the Contractor's expense. The Owner may deduct such costs from moneys due the Contractor.

Section 13.07 - Final Completion

No previous inspection shall relieve the Contractor 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 Contractor shall excuse any failure by the Contractor to comply fully with the Contract Documents. The Contractor shall remedy all Defects and deficiencies, paying the cost of any damage to other Work. Final payment to the Contractor constitutes final completion and acceptance of all the Work of the Contract Documents and constitutes Contract Closeout.

Section 13.08 - Warranties

- A. **Warranty.** Contractor 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 Good Design-Build 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. Contractor further represents and warrants that all equipment and materials furnished by Contractor, or its Subcontractors: (a) will be of new manufacture and will be free from defects in design (if designed by Contractor or purchased by

Contractor from a Subcontractor), workmanship, and materials; (b) will be in compliance with all 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; and (e) will perform in accordance with the requirements of the Contract Documents. Contractor further represents and warrants that such Contractor-supplied construction equipment and materials will comply with the specifications contained in the Contract Documents.

- B. **Nonconforming Work.** If defective Work is discovered prior to the end of the applicable Warranty Callback Period, and Owner gives Contractor notice of such Defect within a commercially reasonable time, Contractor 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. The decision by Contractor to repair or replace shall be made following consultation with Owner, and the repair or replacement shall be scheduled consistent with Owner's operating requirements so as to minimize loss of use of any portion of the Facility to which the Work relates. Owner shall provide Contractor reasonable access to the Facility and Facility records for the purposes of assessing the nature of the Defect. Contractor shall bear all costs and expenses associated with correcting any Defective Work and other direct property damage of Owner to the extent caused by Contractor's breach of warranty. 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 Contractor 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 Contractor pursuant to this Section shall comply with laws, Good Design-Build Practice (or higher standards if specified in the Contract Documents), and the Contract Documents.
- C. **Warranty Callback Period.** The Warranty Callback Period for the Work shall run for a period of one (1) year from Substantial Completion of the Project. If any portion of the Work shall be repaired, replaced, or otherwise corrected pursuant to this 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 one year following the corrective work. Notwithstanding the foregoing, any extension in the Warranty Callback Period provided herein shall not extend the Warranty Callback Period beyond twenty-four (24) months after Substantial Completion. For purposes of Contractor's warranties, normal wear and tear, or damage caused by unauthorized repair or alteration of the Work or improper operation, will not constitute a Defect hereunder.
- D. **No Modification of the Statute of Limitations.** Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations which the Contractor 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 Contractor 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 Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

- E. **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 Contractor, and Contractor 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.
- F. **Subcontractor Warranties.** All guarantees and warranties from Subcontractors shall be made to run in favor of Owner and Contractor. Unless such guarantees and warranties generally run for a greater period of time, Contractor shall obtain guarantees and warranties from Subcontractors that run at least one year from Substantial Completion. Contractor shall provide Owner with the information necessary to determine the additional cost involved if such guarantees and warranties are extended. Contractor 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 Good Design-Build Practice. Contractor 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, Contractor shall be responsible for the Work and compliance thereof within the requirements of the terms of the Contract Documents.
- G. **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 Contractor of Notice from Owner and/or the Construction Manager specifying a Defect, Contractor shall give notice to Owner and/or Construction Manager of when and how Contractor shall remedy said Defect. All Defects that have cost, schedule, safety, or operational impacts shall be remedied by Contractor immediately. If (i) Owner objects to Contractor's explanation of the root cause of any Defect, the proposed remedy or remedy period and Contractor does not offer a substitute root cause, remedy or remedy period satisfactory to Owner, or (ii) if Contractor does not begin and diligently proceed to complete said remedy within the time period specified by Contractor and accepted by Owner, or (iii) if Contractor unreasonably fails to specify a remedy or remedy period acceptable to Owner, Owner, after Notice to Contractor, 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 Contractor, together with all reasonable attorneys' fees, and design and engineering fees.

ARTICLE 14 – PROTECTION OF PERSONS AND PROPERTY

Section 14.01 - Site Safety and Protection

- A. The Contractor 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 Contractor 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 Contractor shall establish and maintain,

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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. The Contractor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work. The Contractor 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 and Construction Manager with a copy of such meeting minutes.
- C. At least ten (10) days before its mobilization to the Site, the Contractor shall prepare and deliver to the Owner and Construction Manager, a Site-specific job safety and security program. 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 Contractor's Site-specific job safety and security plan must be on Site at all times.
- D. Drug and Alcohol Testing. The Contractor shall not allow any worker or employee on a work site who is under, appears to be under, or is suspected of being under the influence of drugs or alcohol. Such employee shall not be allowed on site until drug testing has occurred and Owner has approved Contractor'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 laws. Contractor'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. Contractor shall immediately remove, and deny access to Owner's Site to, any employee or principal of Contractor or Subcontractors who violates or can be reasonably suspected by Contractor of violating the policy adopted by Contractor to conform with this Section. For all personnel removed from Site, Contractor shall provide all information and documentation necessary for Owner's security records. All testing shall be paid for in full by Contractor.
- E. The Contractor shall, at all times: (1) guard the Owner's property from damage or loss in connection with the Work (2) guard and protect the Contractor's Work and adjacent property (3) replace or make good any said loss or damage unless said loss or damage is caused directly by the Owner.
- F. The Contractor shall protect all adjoining property and shall repair or replace any said property damaged or destroyed during the progress of the Work.

Section 14.02 - Protection of Work

- A. The Contractor shall be responsible for the safety, efficiency and adequacy of the Contractor'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 Contractor 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 Good Design-Build Practice.

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- C. The Contractor 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 Contractor 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 Contractor shall immediately report any loss, theft, burglary, vandalism or damage of materials or installed work to the Owner by phone and electronically as soon as it is discovered. If vandalism, theft, or burglary is suspected as the cause of the loss, the Contractor 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 pursuant to Article 10 – Claims and Disputes.
- 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. The Owner may refuse any claim from the Contractor under this section unless all of the items required in this section are provided to the Owner and are to the satisfaction of the Owner.

Section 14.03 - Protection of Lives and Health

- A. The Contractor 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 Contractor shall give the Owner and Construction Manager immediate written notice of the deficiency, and require the correction of the safety violation before the affected Work continues. If the Contractor 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 Contractor, the Owner may require the Contractor 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. The Contractor shall provide a copy of all notices under this section to the Construction Manager and 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 Contractor.

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- B. The Contractor shall notify Construction Manager and the Owner immediately of any incident, accident, illness or injury that occurred on the Project Site. The Contractor shall follow-up and provide the Owner with a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any incident, accident, illness or injury and a copy of the recorded OSHA Log.
- C. The Contractor 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 Contractor 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 Contractor shall provide to the Owner and Construction Manager 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 Construction Manager and the Owner for any reporting period in which a job-related injury or illness is recorded.
- D. The Contractor shall preserve and safeguard the area of any incident, accident, illness or injury where the person required emergency medical treatment. The Contractor 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 Contractor shall telephone and "FAX", including a description of the incident, accident, illness or injury, the Owner, the Construction 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 Contractor upon release by the Owner. The Contractor shall provide the Owner and Construction Manager 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 Contractor shall install, maintain and operate said appliances or methods.
- F. The Owner and/or Construction Manager may inspect the job Site at any time without notice to the Contractor. If the Owner and/or Construction Manager finds that the Contractor 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 Contractor to correct any deficiency. If upon re-inspection, the Construction Manager or 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 Contractor as identified in the General Conditions. The Contractor 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 Contractor.
- G. Failure of the Contractor to comply with provisions of this Article shall be deemed a breach of Contract and the Owner may impose a payment penalty on the Contractor for any act of non-compliance.

Section 14.04 - Risks Assumed by the Contractor

- A. To the fullest extent permitted by law, the Contractor solely assumes the following distinct and several risks whether said risks arise from acts or omissions, whether supervisory or otherwise, of the Owner,

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the Construction Manager, of any Subcontractor, of third persons or from any other cause, including difficulties which may be encountered in the performance of the Work, whether said risks are within or beyond the control of the Contractor and whether said risks involve any legal duty, primary or otherwise, imposed upon the Owner, excepting only risks which arise from and to the extent it is caused by the negligence of a person indemnified hereunder and indemnification of such person is precluded by law or the gross negligence or willful misconduct of the Owner, the Construction Manager, or the Owner's or Construction Manager's, officers, representatives or employees that caused the loss, damage or injuries 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 Construction Manager, the Contractor or any Subcontractor, materialmen or workmen performing services or furnishing materials for the Work. The Contractor 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 Contractor immediately shall repair, replace or make good any said loss or damage.
2. The risk of claims, just or unjust, by third persons against the Contractor or the Owner, and the Construction Manager 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 Contractor's operations or presence at or in the vicinity of the Site. The Contractor 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 Contractor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained resulting from the Contractor's negligence or alleged negligence which is discovered, appears, or is manifested after acceptance by the Owner.
3. The Contractor 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 Contractor 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, , the Construction Manager, the Landlord and their respective members, officers, employees, the Contractor shall assume the defense and pay on behalf of the Owner, , the Construction Manager, the Landlord and their respective members, officers, employees, any and all loss, expense, damage or injury that the Owner, , the Construction Manager, the Landlord and their respective members, officers, employees, may sustain as the result of any claim, provided however, the Contractor shall not be obligated to indemnify the Owner, the Construction Manager, the Landlord and their respective members, officers, employees for their own negligence, if any.
4. Workers' Compensation Waiver. To the fullest extent permitted by laws, Contractor expressly: (1) agrees not to assert as a defense the benefit, insofar as the indemnification of the Owner, the Construction Manager, the Landlord and their respective 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.

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5. The Contractor agrees to assume, and pay on behalf of the Owner, the Construction Manager, servants and employees, the defense of any action at law or equity which may be brought against the Owner, the Construction Manager, the Landlord and their respective members, officers, employees. The assumption of defense and liability by the Contractor 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, the Construction Manager, servants and employees, in any said action.
 6. The Contractor 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 Contractor assumes entire responsibility and liability for complying fully in all respects with these regulations.
 7. The Contractor shall indemnify and defend Owner, the Construction Manager, the Landlord and their respective members, officers, employees from and against all losses including, but not limited to, damages for injury or loss of natural resources arising out of and to the extent of: Contractor's provision of services to Owner relating to Hazardous Materials; The transporting, handling, storage, treatment, release, threatened release or disposal by Contractor, or any third party, of any equipment, substances, or other materials brought onto the Site or used by Contractor or any Subcontractor during the course of performing the Work; Contractor's negligence or willful misconduct with respect to the Hazardous Materials; Contractor'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; or Contractor's failure to comply with its Hazardous Materials obligations under the Contract Documents.
- B. The Contractor's obligations under this Article shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Contractor shall notify its insurance carrier within twenty-four (24) hours after receiving a notice of loss or damage or claim from the Owner, the Construction Manager or the Landlord. The Contractor shall make a claim on its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner, the Construction Manager or the Landlord, including those of being an additional insured where applicable.
- C. Neither final acceptance of the Work nor making any payment shall release the Contractor from the Contractor's obligations under this Article. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which the Contractor is responsible shall not be deemed to limit the effect of the provisions of this Article or to imply that the Contractor 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 Contractor or particular claims for which the Contractor is responsible shall be deemed to limit the risks which the Contractor would assume or the claims for which the Contractor 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 Construction Manager or the Owner's or Construction Manager's 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 Contractor the percentage of uninsured defense costs which the Contractor incurred based upon an apportionment of the Owner's or Construction Manager's allocated responsibility.

ARTICLE 15 – INSURANCE AND BONDS

Section 15.01 - General Provisions

- A. The Contractor 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. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner.
- C. Notwithstanding any other provision in this Article, the Owner may require the Contractor to provide, at the expense of the Owner, any other form or limit of insurance necessary to secure the interests of the Owner.
- D. Neither the procurement nor the maintenance of any type of insurance by the Owner, the Contractor or the Construction Manager shall in any way be construed or deemed to limit, discharge, waive or release the Contractor from any of the obligations or risks accepted by the Contractor or to be a limitation on the nature or extent of said obligations and risks.

Section 15.02 - Submission of Insurance

- A. Prior to execution of the Contract, the Contractor shall submit one original certificate of insurance, indicating the Project and showing evidence of all insurance required under the Contract. Upon the Construction Manager's request, the Contractor shall provide certified copies of each type of insurance policy required by the Contract. In addition, the Contractor shall provide copies of certificates of insurance to the Construction Manager, if applicable. Certificates of insurance, when submitted to the Owner, constitute a warranty by the Contractor that the insurance coverage described is in effect for the policy term shown.
- B. The Contractor shall mail original insurance certificates and bonds to the address noted below. All insurance certificates and bonds must be approved by the Construction Manager prior to the Contractor's commencement of Work.

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

Section 15.03 - Insurance Provided by Contractor

- A. The Contractor and each Subcontractor of every tier shall procure and maintain all of the insurance required under this Article until all Work of the Contract is complete and accepted by the Owner and the Consent of Surety is executed for final payment.

GENERAL CONDITIONS OF THE WORK

1. Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of \$1,000,000 as evidenced by one of the following certificates (**Acord certificates are no longer acceptable**):
 - a. C-105.2 (September '07, or most current version) - Certificate of NYS Workers' Compensation Insurance. The insurance carrier shall provide a completed form as evidence of in-force coverage.
 - b. U-26.3 - Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund shall provide a completed form as evidence of in-force coverage.
 - c. GSI-105.2/SI-12 - Certificate of Workers Compensation Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Group Self Insurance Administrator shall provide a completed form.
2. Disability Benefits:
 - a. DB-120.1 (May '06, or most current version) - Certificate of Disability Benefits. The insurance carrier shall provide a completed form as evidence of in-force coverage.
 - b. DB-155 - Certificate of Disability Self Insurance. 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. The Construction Manager 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 contracts.
3. Commercial General Liability (CGL) with a combined single limit for bodily injury, personal injury and property damage of at least \$5,000,000 per occurrence and aggregate; and Products Liability and Completed Operations with an Aggregate limit of \$5,000,000. Coverage shall provide and encompass at least the following:
 - a. Written on an occurrence form.
 - b. Include ISO Endorsement CG 20 10 11/85 or its equivalent.
 - c. An endorsement naming the Owner, the Construction Manager, the Landlord and other entities as additional insured as specified on the sample certificate of insurance in the Request for Proposals. Additional insured status shall apply during the Products/Completed Operations phase as well as during the course of the Work.
 - d. Policies shall be endorsed to be primary as respects the coverage afforded the additional insured and such policy shall be primary to any other insurance maintained by the Owner and/or Construction Manager. Any other insurance maintained by the Owner and/or Construction Manager shall be in excess of and shall not contribute with the Contractor's or Subcontractor's

GENERAL CONDITIONS OF THE WORK

- insurance, regardless of the “other insurance” clause contained in the Owner’s own policy of insurance. A copy of the endorsement reflecting this requirement may be requested by the Owner.
- e. Excavation, Collapse and Underground Hazards (where applicable).
 - f. Independent Contractors.
 - g. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the General Conditions.
 - h. Products and completed operations coverage for a term no less than three years.
4. Commercial Automobile Liability and Property Damage Insurance covering all owned, leased, hired and non-owned vehicles used in connection with the Work, with a combined single limit for bodily injury and property damage of at least \$1,000,000 each person and accident. The limit may be provided through a combination of primary and umbrella and/or excess liability policies.
5. Umbrella and/or Excess Liability Policies. Contractor shall maintain Commercial Umbrella or Excess Insurance with minimum limits of \$5,000,000 per occurrence, \$5,000,000 aggregate. Such coverage must include, as scheduled policies, the Employer’s Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance described above. The excess policies shall be “following form” over and shall not contain endorsements which restrict coverage as set forth in General Conditions, Sections 15.03 (1) (with respect to Employers Liability only), 15.03 (3), and 15.03 (4). Such insurance shall not be excess to other insurance maintained by the Owner. The Contractor shall provide a copy of the umbrella and/or excess liability policy declarations page and the underlying schedule of insurance upon the Owner’s request. Coverage shall provide and encompass at least the following:
- a. Written on an occurrence form.
 - b. Include ISO Endorsement CG 20 10 11/85 or its equivalent.
 - c. An endorsement naming the Dormitory Authority – State of New York and, if applicable, the Construction Manager, , the Landlord and other entities as additional insured as specified on the sample certificate of insurance in the bidding documents.
6. The Contractor 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 Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not render the additional insured or their agents and employees responsible for any losses; and the additional insured, their agents and employees shall have no such liability.

Section 15.04 - Other Insurance Provided by Contractor

- A. United States Longshoremen and Harbor Workers’ Compensation Act: When the Contractor and/or Subcontractors are engaged in maritime activities on or near the navigable waterways of the United States, the Workers’ Compensation policy referenced above shall be endorsed to provide this coverage.

GENERAL CONDITIONS OF THE WORK

- B. Asbestos Abatement Liability: The Contractor or Subcontractors performing any Work which involves asbestos shall provide asbestos liability insurance with a limit of \$2,000,000 per occurrence and aggregate. Coverage shall provide and encompass at least the following:
1. An endorsement naming the Construction Manager, the Owner, the Landlord and other entities as additional insured as specified on the sample certificate of insurance in the Bidding Documents.
 2. Coverage shall be on an occurrence basis.
- C. Pollution Liability for Hazardous/Contaminated Materials: The Contractor or Subcontractors performing Work involving pollutants including, but not limited to excavation, removal, repair, installation, testing, and petroleum remediation operations for underground petroleum storage tanks shall provide coverage that encompasses at least the following:
1. Pollution Liability with a combined single limit of \$2,000,000 per occurrence and aggregate.
 2. Endorsement naming the following as additional insured's: The Construction Manager and other entities specified on the sample certificate of insurance provided by the Owner, if coverage is on an occurrence basis.
 3. If coverage is on a claims-made policy form then an extended reporting provision of up to three years after Work is completed is required. If coverage is cancelled or not renewed, then the Contractor shall purchase the extended reporting provision for a period of three years for claims made during the project but reported after the cancellation of the coverage.
 4. A maximum Self-Insured Retention of \$50,000, or an amount approved by the Owner.
- D. Railroad Protective Liability: If the Contractor and its Subcontractors are providing Work in close proximity to railways that the Contractor determines will require entrance upon railway right of way, Contractor shall provide Railroad Protective Liability coverage on policy forms AASHO or ISO-RIMA.
- E. Professional Liability, with limits of not less than two million dollars (\$2,000,000) each claim/ two million dollars (\$2,000,000) annual aggregate subject to a deductible or self insured retention of not more than one hundred thousand dollars (\$100,000.00) per claim or an amount acceptable to the Owner. Contractor's design professionals shall maintain policy coverage for a period of three years following the final acceptance of the Project by the Owner.
1. If applicable, Asbestos Professional Liability, with a limit of two million dollars (\$2,000,000) each claim/\$2,000,000 annual aggregate and a maximum self-insured retention of one hundred thousand dollars (\$100,000) or an amount acceptable to the Owner.
 2. If applicable, Environmental Engineers and Consultants Professional Liability, with a limit of two million dollars (\$2,000,000) each claim/\$2,000,000 annual aggregate and a maximum self-insured retention of one hundred thousand dollars (\$100,000), or an amount acceptable to the Owner, for Professionals involved in the removal, repair, installation and testing of underground petroleum storage tanks or in petroleum remediation operations, or Professionals engaged in or performing Work related to excavation, loading, transporting or unloading of hazardous and/or contaminated materials.

3. If applicable, should the Contractor exercise design delegation for all or part of the Design Work under the Contract Documents, then the Contractor shall require the Contractor's delegatee design professional to obtain professional liability insurance with limits of not less than two million dollars (\$2,000,000) each claim/ two million dollars (\$2,000,000) annual aggregate subject to a deductible or self-insured retention of not more than one hundred thousand dollars (\$100,000) per claim or an amount acceptable to the Owner. The Contractor shall specify the above requirements as part of its Subcontract with the Contractor's delegatee design professional and shall require the Contractor's delegatee design professional to submit proof of insurance in the amount identified above. This submittal shall be required prior to any receipt of documents prepared by the Contractor's delegatee design professional.
- F. Delegated Design: The Contractor or Subcontractor performing any Work which involves delegation of design shall provide Error and Omissions Professional Liability Insurance for the delegated design work in accordance with the amount indicated in the Contract Documents. A minimum insurance limit of not less than two million dollars (\$2,000,000) for each claim and for an annual aggregate shall be required. Professional Liability Insurance with a two million dollars (\$2,000,000) limit subject to a deductible of not more than one hundred thousand dollars (\$100,000) per claim.
1. Contractor's delegatee design professional shall purchase at its sole expense extended Discovery Clause of up to 3 years after Work is completed if coverage is canceled or not renewed.
 2. Maximum Self-Insured Retention of \$100,000, or an amount acceptable to the Owner.

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. Certificates shall provide thirty (30) days written notice prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. The Contractor shall be responsible to submit updated insurance certificates thirty (30) days prior to any insurance certificate expiration date.
- B. Failure of the Contractor to maintain and provide the Owner with evidence of valid and in-force insurance coverage shall result in a Stop Work Order pursuant to Article 11 – Termination or Suspension and/or withholding of payment to the Contractor.
- 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 Contractor shall immediately cease Work on the Project. The Contractor shall not resume Work on the Project until authorized to do so by the Construction Manager and/or Owner.
- D. Any delay or time lost as a result of the Contractor not having proper insurance required by this Article shall not give rise to a delay claim or any other claim against the Owner. Further, the Contractor may be liable to other contractors for costs incurred by reason of the Contractor's failure to provide insurance.

Section 15.06 - Builder's Risk

- A. The Contractor shall provide Builder's Risk for the Project.

GENERAL CONDITIONS OF THE WORK

1. The Contractor shall maintain until the date of Substantial Completion, All Risk Builder's Risk completed Value Form, with coverage for 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. When applicable, the Contractor's Interest Completed Value form may be used. The extended coverage endorsement may include a loss deductible acceptable to the Owner. Losses up to and including the deductible provision shall be borne by the Contractor.
2. Each Builder's Risk 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 Contractor, occupancy of the premises shall not require consent of the insurer, nor shall such occupancy be the basis for a rate adjustment."
3. Builder's Risk policies shall be issued by insurance companies authorized to conduct such business under the laws of the State of New York, shall name the Owner, the Landlord, the Contractor as Loss Payees as their 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, no notice of cancellation by the insurer shall be effective until sixty (60) days after such notice is received by the Owner.
4. The Owner may withhold the Contractor's payment for Work which is required to be insured until original binder or policies for the Builder's Risk are provided to the Owner pursuant to Section 15.06.

Section 15.07 - Bonds Provided by Contractor

- A. The Contractor shall provide a performance bond in an amount at least equal to 100% of the Contract sum as security for the faithful performance of the Contract. The Contractor shall also provide a payment bond in an amount at least equal to 100% of the Contract sum for the payment of all persons performing labor or providing materials in connection with the Work of the Contract. The Contractor shall execute bond forms included as part of the Contract Documents.
- B. If at any time the Owner and/or Construction Manager 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 Contractor shall, within five (5) days after notice from the Owner and/or Construction Manager 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 Contractor 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.
- C. The surety company, on all bonds, shall be authorized to do business in the State of New York and rated at least B+ by A.M. Best and Company, or meet such other requirements as are acceptable to the Owner.

ARTICLE 16 – GENERAL PROVISIONS OF THE CONTRACT

Section 16.01 - General Law Provisions

GENERAL CONDITIONS OF THE WORK

- A. The laws of the State of New York shall govern the Contract, and Contractor and its Subcontractors shall comply fully with all applicable provisions of the laws of the State of New York (including the MRTA), 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.
- B. 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. The Contractor shall comply fully with all applicable laws, rules and regulations, and as applicable, including the Building Code of New York State.
- D. Contractor shall maintain, and shall require all Subcontractors to maintain, all applicable contractors' licenses required by laws.

Section 16.02 – [Intentionally Omitted]

Section 16.03 - Diesel Emissions Reduction

- A. The Contractor 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, Part 248 (6NYCRR 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 Contractor.
- B. Annually, as required by DEC, but no later than March 1st, the Contractor shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Contractors 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 Contractor shall certify to the Owner, and submit with each application for payment, the Contractor and Subcontractor Certifications form, which states that the Contractor 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 Contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
 - 1. No worker, in the employ of the Contractor, 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) calendar day and more than five (5) days in any one week, except in the extraordinary emergencies set forth in the Labor Law.

GENERAL CONDITIONS OF THE WORK

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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor and all Subcontractors shall be paid in accordance with the provisions of the Labor Law. The Contractor and all Subcontractors shall submit original copies of the Contractor and Subcontractor Certifications form and Certified Payroll forms in accordance with payment procedures and otherwise upon request.
- E. The Contractor agrees that, in case of underpayment of wages to any worker engaged in the Work by the Contractor or any Subcontractor, the Owner shall withhold from the Contractor 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 Contractor to the worker to whom such amount is due. The Contractor 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 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 a Contractor's or Subcontractor's second conviction for willfully paying or providing less than:

GENERAL CONDITIONS OF THE WORK

1. The stipulated wage scale or supplement as established by the fiscal officer.
 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 Contractor 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 Contractor specifically agrees that all workers engaged on the Site, whether employees of the Contractor, 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 Contractor agrees as follows:

- A. If directed to do so by the Commissioner of Human Rights, the Contractor will send to each labor union or representative of workers with which the Contractor 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 Contractor's agreement under clauses A through E (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the Owner as part of the Request for Proposals or negotiation of this Contract, the Contractor 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 Contractor 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 Contractor 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 Contractor will comply with the provisions of Section 290-299 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 Contractor'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 Contractor has not complied with these nondiscrimination clauses, and the Contractor 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 Contractor satisfies the State Commissioner of Human Rights that the Contractor 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 Contractor and an opportunity has been afforded the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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. The Contractor 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 Contractor, Subcontractor, nor any person acting on behalf of such Contractor 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 Contractor, Subcontractor, nor any person on behalf of such Contractor 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 Contractor, by the Owner under the Contract, a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of 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, or when one final determination involves the falsification of payroll records or the kickback of wages and/or supplements.

Section 16.06 – [Intentionally Omitted]

Section 16.07 - General Contract Provisions

- A. The Contractor agrees that: (i) the Contract shall be a general obligation of the Fund; (ii) the Construction Manager is not a party to this Contract and shall have no liability to the Contractor or any of its Subcontractors; (iii) the Contractor hereby releases the Construction Manager from any and all

claims that may it now or in the future have against the Construction Manager as a result of actions taken by the Construction Manager under this Contract; and (iv) that it will include clauses (i) through (iii) of this sentence in all its contracts with Subcontractors.

- B. The relationship created by the Contract between the Owner and the Contractor is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Contractor nor is it to be construed as, in any way or under any circumstances, creating or appointing the Contractor as an agent of the Owner for any purpose whatsoever.
- C. It is understood that the Construction Manager is an intended third party beneficiary of the Contract for the purposes of recovering any damages caused by the Contractor on account of the Contractor's obligations under this Contract to defend and indemnify the Construction Manager.
- D. The Contractor shall not assign the Contract in whole or in part without prior written consent of the Owner. If the Contractor 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 Contractor and assignee agree that the assignee's right in and to any moneys due or to become due to the Contractor 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 Contractor.
- E. 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 and the Construction Manager, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the Contract.
- F. 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

The Owner will not be responsible for any Claim arising from compliance with this Article 16.

ARTICLE 17 – AUDITS/INVESTIGATIONS/ETHICS

Section 17.01 - Owner's Right to Audit

The Contractor 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 Contractor, 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 17.02 - False Statements/Information/Disclosure

Failure to comply with 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 Contractor 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 Section 11.01.
2. Rejection of future bids or disapproval of a contract and subcontract.
3. Withholding of payments.
4. Criminal prosecution.
5. Rejection of a Claim or Change Order.

Section 17.03 - Owner's Right to Conduct Investigations

- A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Owner.
- B. The Contractor shall grant the Owner the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the Contractor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the Contractor, relating to the Contract. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; 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.
- C. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Contractor 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 Contractor but not currently in the Contractor's physical possession. The Contractor shall not enter into any agreement with a Subcontractor, consultant or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the Owner. The Contractor 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.
- D. The Contractor shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Contractor, for purposes of the Contract.
- E. The Contractor 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 section. The Contractor shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Contractor shall not make any payments to a Subcontractor, consultant or supplier from whom the Contractor has failed to obtain and supply to the Owner complete, accurate and truthful information in compliance with a request from the Owner to the Contractor.

- F. Any violation of the provisions of this Article shall justify termination of this Contract and may result in the Owner's rejection of the Contractor's bids or proposals for future contracts.

Section 17.04 - Disclosure of Criminal Investigation

- A. The Contractor shall immediately notify the Construction Manager and the Owner in the event that any owner, partner, director, officer or employee of the Contractor, or its affiliated companies as identified in the Uniform Contracting Questionnaire, 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 Contractor or its affiliated companies is under investigation for an alleged business-related violation of criminal law, or in the event that any premises or records of the Contractor are searched pursuant to a search warrant seeking evidence of a crime or crimes, unless otherwise precluded by law enforcement authorities.
- B. The Contractor shall immediately notify the Construction Manager and the Owner in the event that any owner, partner, director, officer or employee of the Contractor or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire, the firm itself, or one of its affiliated 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 Contractor 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 Contract with the Owner, the Owner may require the Contractor to remove said owner, partner, director, officer or employee from any direct involvement in the affairs of the Contractor as it relates to this Contract and all other contracts with the Fund until the criminal matter is resolved. In the event that any owner, partner, director, officer or employee of the Contractor is convicted of a business-related violation of local, state or federal criminal law, the Owner may require the Contractor to permanently remove said individual from any direct involvement in the affairs of this and all other Fund contracts.
- D. In the event that the Contractor or any owner, partner, director, officer or employee of the Contractor is convicted of a business-related violation of local, state or federal criminal law, the Owner may schedule a hearing with the Contractor to determine the Contractor's responsibility to continue work under this Contract. 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 Contractor, 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 17.05 - Anti-Riot Provisions

GENERAL CONDITIONS OF THE WORK

The Contractor 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 17.06 - Ethical Conduct

- A. Officers and employees of the Construction Manager are bound by Sections 73, 73-a, and 74 of the *New York State Public Officers Law*.
- B. Section 73(5) of the *Public Officers Law* expressly prohibits the Contractor, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Construction Manager 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 Construction Manager has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the Contractor 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 Contractor 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. The Contractor agrees to notify the Construction Manager's Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Construction Manager that is inconsistent with the contents of this Section.
- D. Any violation of Section 17.06 on the part of Contractor shall justify termination of this Contract and may result in Owner's rejection of the Contractor's bids or proposals for future agreements.

Section 17.07 - Continuing Integrity

- A. Contractor shall at all times during the Contract term remain responsible. Contractor agrees, if requested by the Owner or its 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 Owner or its designee, in their 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 Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the 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 Contractor, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the Owner or its designee at Contractor's expense where Contractor is determined by

the President of Owner or his or her designee to be non-responsible. In such event, the Owner or its 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 17.08 - Iran Divestment

- A. By entering into this Contract, Contractor certifies, under the penalties of perjury, that Contractor is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law. Contractor further certifies that Contractor 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 State Finance Law.
- B. During this Contract, should Owner receive information that a person (as defined in New York 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 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 Contractor in default.

ARTICLE 18 – [Intentionally Omitted]

ARTICLE 19 – [Intentionally Omitted]

ARTICLE 20 – OPPORTUNITY PROGRAMS

Section 20.01 - [Intentionally Omitted]

Section 20.02 - Equal Employment Opportunity (EEO)

- A. The Contractor agrees to be bound by the following clauses and provide the Owner with the following information:
 - 1. The Contractor and Subcontractors 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.
 - 2. The Contractor shall submit an EEO policy statement to the Owner on or before the Execution Date.

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3. If a Contractor or Subcontractor does not have an existing EEO policy statement, the Owner may provide the Contractor or Subcontractor a model plan.
4. The Contractor's EEO policy statement shall include the following:
 - a. The Contractor 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 Contractor 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 Contractor 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 Contractor's obligations herein.
5. The Contractor shall submit a Six Month Workforce Utilization Schedule if requested by the Owner or the Construction Manager acting as agent on behalf of the Owner.
6. To ensure continuous compliance with Section 20.02 during the life of the Contract, the Contractor and Subcontractors shall submit to the Owner a Monthly Workforce Utilization Report.
7. The Contractor shall include the provisions of Section 20.02 in each Subcontract in such a manner that the requirements will be binding upon each Subcontractor.

Section 20.03 - Opportunities for Minority and Women-Owned Business Enterprises (M/WBE) and Service Disabled Veteran Owned Businesses (SDVOB)

The Fund and its Construction Manager are committed to diversity and equal employment opportunities among its contractors, consultants, and vendors. It is the policy of both the Fund and the Construction Manager to maximize opportunities for the participation of Minority-Owned, Women-Owned (M/WBE), and Service-Disabled Veteran-Owned Businesses (SDVOB) firms as bidders, subcontractors, and suppliers on projects. Consistent with the foregoing policies Contractor agrees that it will use good faith efforts to provide for meaningful participation by M/WBE and SDVOB firms in the Work where feasible even though no goals for participation in the Work by certified M/WBE and SDVOB firms have been established for the Work to be performed.

Section 20.04 - Good Faith Efforts

The Contractor must demonstrate it has made good faith efforts to comply with the requirements of the Contract Documents and submit documentation to enable the Owner to make a determination for compliance with the provisions of this Article.

Section 20.05 – [Intentionally Omitted]

Section 20.06 - [Intentionally Omitted]

Section 20.07 - [Intentionally Omitted]

Section 20.08 – [Intentionally Omitted]

ARTICLE 21 – [Intentionally Omitted]

ARTICLE 22 – DISPUTE RESOLUTION

Section 22.01 - Forum for Dispute Resolution

It is the express intention of the Parties that all legal 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

Section 22.02 – [Intentionally Omitted]

Section 22.03 - Continuance of Performance During Dispute

Unless otherwise directed in writing by the Owner, at all times during the course of any Forced Change Order Work, Change Order negotiations, dispute resolution procedure or legal proceeding, the Contractor shall continue with the performance of its Contract obligations in a diligent manner and in accordance with the applicable provisions of this Contract. The Owner shall continue to satisfy its uncontested payment obligations to the Contractor during the pendency of any such dispute, subject to the terms and conditions of this Contract. Records of the Contract obligations performed during such time shall be kept in accordance with the applicable provisions of this Contract.]

ARTICLE 23 – OWNERSHIP OF DOCUMENTS

- A. Original drawings and specifications will become the property of the Owner, and the Contractor may not use the drawings and specifications for any purpose not relating to the Project without the Owner's consent. The Contractor may retain such reproductions of drawings and specifications as the Contractor may reasonably require. Upon completion of the Work or any early termination of this Contract, the Contractor will promptly furnish the Owner with the complete set of original record As-builts. All such original drawings and specifications shall become the property of the Owner who may use them, without the Contractor'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.

- B. All documents, including Drawings and Specifications, furnished by Contractor and its Subcontractors pursuant to this Contract shall become the sole property of Owner upon payment, completion or cancellation of the Work or termination of this Contract. The Contractor grants Owner, and shall obtain from its Subcontractors, including its design professional Subcontractors, a fully paid-up, non-exclusive, perpetual, royalty-free license to the design of the Project and the right to use 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.
- C. **Patent, Copyright, and Trade Secret Indemnity.** Contractor warrants and represents that any materials, equipment, 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 parties. Contractor agrees to indemnify, defend, and hold Owner and any other indemnified party harmless from and against any and all claims, demands, damages, losses, liabilities, penalties, costs, and expenses including, but not limited, to reasonable attorneys' fees, that any Owner or any other indemnified party may hereafter suffer or pay out by reason of 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 Contractor or any of its Subcontractors.
1. **Patent, Copyright and Trade Secret Infringement.** Contractor 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 Contractor upon becoming aware of such claim, demand, action, or proceeding and provided further that Contractor's aforementioned obligations shall not apply to materials, equipment, or processes furnished or specified by Owner.
 2. **Trade Secret Misappropriation.** Contractor 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 Contractor upon becoming aware of such claim, demand, action, or proceeding and provided further that Contractor's aforementioned obligations shall not apply to Materials, equipment or processes furnished or specified by Owner.
 3. **Substitution by Contractor.** Contractor shall have the right, in order to avoid any claims, demands, damages, losses, liabilities, penalties, costs, and expenses including, but not limited to, reasonable attorneys' fees, for infringement or misappropriation, to substitute, at its expense, any non-infringing materials, equipment, or processes, or to modify such infringing materials, equipment, or processes of the Work so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, equipment, or processes provided that such substituted and modified materials, equipment, or processes meet all the requirements and are subject to all the provisions of the Contract Documents.
 4. **Removal of Injunctions.** If Owner or Contractor is enjoined from completion of the Work or any part thereof, or from the use, operation, or enjoyment of the Work or any part thereof as a result of any claim, legal action, or litigation of the type described in this Section, Contractor shall use its

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best efforts to have such injunction removed promptly at no cost to Owner, and Owner may without thereby limiting any other right it may have hereunder or at law or in equity, require Contractor at Contractor's option to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any patent or to replace all such facilities or to take such steps as may be necessary to ensure compliance by Owner with such injunction, all to the satisfaction of Owner while maintaining the functionality of the Work and all without additional cost or expense to Owner, including any additional operating cost.