



**QUEENS SITE PARKING GARAGE**

**AN EARLY WORKS PROJECT  
OF THE NEW YORK CITY DESIGN-BUILD  
BOROUGH BASED JAILS PROGRAM**

**DESIGN-BUILD AGREEMENT**

dated as of February 2, 2021

between

**THE CITY OF NEW YORK**

and

**HUNTER ROBERTS CONSTRUCTION GROUP, LLC**

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## Design-Build Agreement

This Design-Build Agreement (“**Agreement**”) is entered as of February 2 2021 (the “**Agreement Date**”).

### BETWEEN:

- (1) The City of New York, a municipal corporation organized under the Laws of the State of New York (the “**City**”) acting by and through its Department of Design and Construction (the “**DDC**”), and
  - (2) Hunter Roberts Construction Group, LLC (“**Design-Builder**”), a limited liability company existing under the laws of Delaware,
- (each a “**Party**” and together the “**Parties**”).

### BACKGROUND:

- (A) On November 21, 2019, the DDC publicly issued a “Request for Qualifications” (collectively, with all subsequently issued addenda and conformed versions, the “**RFQ**”) regarding a proposed future solicitation for the Work.
- (B) On September 4, 2020, the DDC issued the final form of a “Request for Proposals” (including a form of this Agreement) (collectively, with all subsequently issued addenda, the “**RFP**”) to the Proposers.
- (C) On September 18, 2020, the DDC received the Design-Builder’s Proposal from the Design-Builder in response to the RFP.
- (D) On November 13, 2020, in accordance with the evaluation process outlined in the RFP, the DDC selected the Design-Builder as the Preferred Proposer under the RFP. The DDC’s decision was based on its overall evaluation of the Proposals received from the Proposers and the DDC’s conclusion that the Proposal from the Design-Builder offered the best value for the City.

**THE PARTIES AGREE** as follows:

## PART A – PRELIMINARY

### 1. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

#### 1.1 Definitions

Capitalized terms and acronyms used in this Agreement have the meanings given in Exhibit 1 (*Definitions*), unless the context otherwise requires.

#### 1.2 Interpretation

This Agreement must be interpreted according to the following provisions, except to the extent the context or the otherwise express provisions of this Agreement otherwise require:

- (a) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice-versa.
- (b) Words importing persons include firms, individuals, legal representatives, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations, governmental and other legal entities.

- (c) The table of contents and any headings preceding the text of the Parts, Sections, and subsections of this Agreement are solely for convenience of reference and do not affect its meaning, construction, or effect.
- (d) All references in this Agreement to days are references to calendar days, unless otherwise indicated. Each reference to time of day is a reference to Eastern Standard Time or Eastern Daylight-Saving time, as the case may be. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing the act will be extended to the next Business Day.
- (e) The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation” respectively.
- (f) Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates, or replaces the statute or statutory provision or which has been amended, extended, consolidated, or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute or statutory provision.
- (g) Throughout this Agreement, references to any law, regulation, code, guidance, requirement, resolution, policy, standard or permit, either generally or specifically, will refer to such law, regulation, code, guidance, requirement, program, resolution, policy, standard or permit as in effect at the time actions described in this Agreement are taken that are subject to them, whether amended, modified or replaced by a successor to the law, regulation, code, guidance, requirement, program, resolution, policy, standard or permit referenced herein, unless in a particular case this Agreement explicitly states otherwise.
- (h) All references to “knowledge”, “knowing”, “know” or “knew” will be interpreted as references to a party having actual knowledge.
- (i) Any reference in this Agreement to materials, equipment, systems, supplies (regardless of whether the references are in lists, notes, specifications, schedules, or otherwise) will be construed to require the Design-Builder to furnish the same in accordance with the grades and standards indicated in this Agreement. Where this Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Design-Builder must use only workmanship and materials specified elsewhere in the Project Requirements, and the Project Requirements are to be interpreted accordingly.
- (j) Some sections of the Project Requirements contain a general description of the Work required under that section. These descriptions are very general and are not intended to outline all the Work required by the Project Requirements and should be construed as aiding and supplementing, but in no case limiting, impairing or decreasing, the requirements for the Work to be performed as described in other sections of these Project Requirements.
- (k) References in this Agreement to all Applicable Standards, including professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes, and specifications of the institute, organization, association, authority or society specified, unless otherwise specified herein or by Applicable Law.
- (l) The language in all parts of the Contract Documents will in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge and agree that the Contract Documents have been the subject

of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review the Contract Documents with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents will not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction (as set forth in this Agreement) will be utilized.

### 1.3 Order of Precedence

- (a) Each of the Contract Documents is an essential part of the agreement between the Parties. The Contract Documents are intended to be complementary and to be read together with this Agreement as a complete agreement. Except as otherwise expressly provided in this Section 1.3, if there is any conflict, ambiguity or inconsistency between the provisions of the Contract Documents, the order of precedence from highest to lowest will be as follows:
  - (i) any amendment to this Agreement;
  - (ii) any Change Order, Minor Waiver, Allowance Approval or Completion Extension;
  - (iii) the provisions of the main body of this Agreement;
  - (iv) the provisions of the Exhibits to this Agreement, other than Exhibit 7 (Project Requirements) and Exhibit 8 (*Design-Builder Proposal Commitments*);
  - (v) the provisions of Exhibit 7 (Project Requirements);
  - (vi) the Final Design Documents; and
  - (vii) Design-Builder Proposal Commitments.
- (b) With respect to Exhibit 7 (Project Requirements), except as otherwise expressly provided in this Section 1.3, if there is any conflict, ambiguity or inconsistency between the Standard Project Requirements, the Specific Project Requirements and Reference Documents, the order of precedence will be as follows, from highest to lowest:
  - (i) the Standard Project Requirements;
  - (ii) the Specific Project Requirements; and
  - (iii) the Reference Documents.
- (c) If the Contract Documents contain differing provisions or requirements with respect to the same subject matter, the provisions that establish the higher quality manner or method of performing the Work, or better performance, or that establish more stringent standards, will prevail.
- (d) Where the Project Requirements require a higher quality manner or method of performing the Work, or better performance, or establish more stringent standards than Applicable Law or Applicable Standards, the Project Requirements will prevail, provided those higher quality or more stringent Project Requirements do not violate Applicable Law or Applicable Standards.

- (e) If the Design-Builder Commitments include statements, provisions, concepts or designs that can reasonably be interpreted as offering to provide a higher quality manner or method of performing the Work, or better performance, or that establish more stringent standards than otherwise required by the Final Design Document or as otherwise provided in the Contract Documents; then the Design-Builder will be obligated to comply with such statements, provisions, concepts and designs as set out in the Design-Builder Commitments.
- (f) Additional or supplemental details or requirements in a provision of the Contract Documents with lower priority will be given effect, except to the extent that they irreconcilably conflict with any provision of the Contract Documents with higher priority.

#### 1.4 **Resolving any Conflict or Ambiguity**

- (a) If either Party becomes aware of any conflict, ambiguity or inconsistency between the provisions of this Agreement, it must promptly notify the other Party in writing of the conflict, ambiguity or inconsistency and its assessment of which provision should prevail in light of the application of the rules set forth in Section 1.3 (*Order of Precedence*).
- (b) If any conflict, ambiguity or inconsistency between the provisions of this Agreement cannot be reconciled and determined in accordance with Section 1.3 (*Order of Precedence*); or the Parties disagree with respect to any conflict, ambiguity or inconsistency between the provisions of this Agreement, the DDC will promptly issue a written determination to the Design-Builder, resolving the conflict, ambiguity or inconsistency. Such written determination will not constitute a DDC Directive (or other Delay Event), except where:
  - (i) the Design-Builder gives notice of the conflict, ambiguity or inconsistency strictly within the Site Validation Period;
  - (ii) the conflict, ambiguity or inconsistency was not of a patent nature, such that the conflict, ambiguity or inconsistency could reasonably have been identified by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Best Management Practice in the same or equivalent circumstances through inspection of the Contract Documents, including the Project Requirements and Available Documents, prior to the Setting Date;
  - (iii) Work required by the DDC's resolution of the conflict, ambiguity or inconsistency was not otherwise reasonably inferable from the Contract Documents; and
  - (iv) DDC's determination resolving the same will result in an increase in Net Costs or material delay to the Critical Path.

The Design-Builder's entitlement to relief under this Section is subject to Article 27 (*Delay Events*). Any determination by the DDC under this Section 1.4 will not constitute a Change Order.

#### 1.5 **Good Faith and Discretions**

- (a) In all dealings under or in connection with this Agreement, the Parties must act in Good Faith.
- (b) All determinations, consents or approvals of the DDC or the Design-Builder under this Agreement must be made in Good Faith and, unless indicated otherwise in this Agreement, must not be unreasonably withheld, conditioned or delayed.

**2. JOINT AND SEVERAL LIABILITY**

If the Design-Builder is a joint venture or other form of partnership, each DB Member is jointly and severally liable for the obligations of the Design-Builder under this Agreement.

**3. AVAILABLE DOCUMENTS AND DUE DILIGENCE**

**3.1 No Representation by the City**

(a) Except as otherwise expressly provided in this Agreement:

- (i) the City makes no representations or warranties as to the relevance, completeness, accuracy, adequacy or fitness for any purpose of any of the Available Documents, publicly-available information or any information provided by the City;
- (ii) the Available Documents are for reference purposes only and are not mandatory or binding on the Design-Builder or the City; and
- (iii) the Design-Builder is not entitled to rely on the Available Documents, publicly available information or any information provided by the City as completely or accurately describing past, existing or future conditions or information, presenting design, engineering or maintenance solutions or directions, or defining means or methods for complying with the requirements of this Agreement, including the applicable Standards of Performance.

(b) Except as otherwise expressly provided in this Agreement, the Design-Builder must make, and will be deemed to have made, its own inquiries as to the relevance, completeness, accuracy, adequacy and fitness for purpose of any and all the Available Documents, publicly-available information and any information provided by the City.

**3.2 No Claims and No Liability**

Except as otherwise expressly provided in this Agreement:

- (a) the Design-Builder will not in any way be relieved from any obligation under this Agreement;
- (b) no Design-Builder Party will be entitled to bring any claims (whether under this Agreement or otherwise) and will have no cause of action against the City or any of its officials, employees, agents, representatives or consultants; and
- (c) neither the City nor any of its officials, employees, agents, representatives and consultants will have any liability to any Design-Builder Party,

in each case as a result of, or with respect to, the Available Documents, publicly-available information or any information provided by the City including any:

- (i) lack of relevance, completeness, accuracy, adequacy or fitness for any purpose of any kind whatsoever in the Available Documents or any other information provided by the City;
- (ii) failure to make available to the Design-Builder any materials, documents, drawings, plans or other information relating to the Work; or

- (iii) Losses suffered by any Design-Builder Party by reason of any use of information contained in, or any action or forbearance in reliance on, the Available Documents, publicly-available information or any information provided by the City.

### 3.3 Design-Builder Due Diligence

- (a) The Design-Builder represents and warrants to the DDC that:
  - (i) the Design-Builder and each DB Member is a sophisticated, qualified and experienced contractor capable of performing the Work and independently assessing the Available Documents, publicly-available information and any information provided by the DDC on the basis set out in Sections 3.1 (*No Representation by the DDC*) and 3.2 (*No Claims and No Liability*);
  - (ii) the Design-Builder and each DB Member have familiarized themselves with the Project Requirements, Available Documents, the requirements of this Agreement and all Applicable Laws, Applicable Standards and the obligations and conditions of the Governmental Approvals in effect, and have no reason to believe that any Governmental Approval required or reasonably anticipated to be obtained by the Design-Builder will not be granted in due course or will not remain in effect to enable the Work to proceed in accordance with this Agreement;
  - (iii) the Design-Builder and each Design-Builder Party have, in accordance with Best Management Practice:
    - (A) evaluated and ascertained the nature and location of the required Work and the constraints and conditions affecting the Work, including the Project Site and surrounding locations (based on the Available Documents and a visible inspection of the Project Site and surrounding locations), the terms of the Contract Documents, and the applicable Standards of Performance in effect;
    - (B) investigated and reviewed the Available Documents, any other information provided by the DDC, and other available public and private records;
    - (C) familiarized itself with the Project Site including:
      - (1) its physical conditions, including all site conditions (including geotechnical, hydrological, ecological, environmental);
      - (2) normal and usual soil conditions, roads, the existence of obstacles to performing the Work;
      - (3) the availability of Utilities, topographical conditions and air and water quality conditions, the location and character of existing or adjacent work;
      - (4) any existing City assets or structures;
      - (5) the surrounding locations and other general and local conditions (including equipment and labor), including the availability of access to, on, under and through each part of the Project Site and the adequacy of the access with respect to the Project Site for the purposes of carrying out the obligations under this Agreement;

- (6) the precautions, times and methods of work necessary to prevent or, if it is not possible to prevent, to mitigate or reduce, any nuisance or interference, whether public or private, being caused to any third parties (based on the Available Documents, publicly-available information and a visible inspection of the Project Site and surrounding locations); and
  - (7) all other local and other conditions that may be material to the Design-Builder's performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor).
- (iv) as a result of the evaluation, review, inspection, examination and other activities referred to in clause (iii), the Design-Builder confirms that each Design-Builder Party:
- (A) is familiar with and accepts the conditions and constraints and physical requirements of the Work; and
  - (B) has reasonable grounds for believing, and does believe, that the Work can be fully performed within the conditions, constraints and physical requirements.

#### 4. **PERFORMANCE SECURITY**

##### 4.1 **Guarantee Agreement**

If required as part of the RFP,<sup>1</sup> on or before the Agreement Date, the Design-Builder must provide the DDC with a Guarantee executed by the Guarantor, in substantially the form set out in Exhibit 11 (*Form of Guarantee*), in which the Guarantor guarantees all of the Design-Builder's obligations under this Agreement. If the Design-Builder is a limited liability company or a joint venture comprised of more than one DB Member, each DB Member may provide a Guarantee by its parent company or affiliate guarantor; provided that each Guarantee will guarantee all of the Design-Builder's obligations under this Agreement.

##### 4.2 **Performance Bond and Payment Bond**

On or before the Agreement Date, the Design-Builder must provide the DDC with a performance bond with a bonded sum of 100% of the Contract Price and payment bond with a bonded sum of 100% of the Contract Price, issued by a Qualified Surety, in substantially the form set out in Exhibit 15 (*Form of Performance Bond and Payment Bond*) (the "**Performance Bond**" and the

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<sup>1</sup> Hunter Roberts Construction Group was not required to secure or submit a Guarantee for the Project as part of the RFP process or otherwise.

“**Payment Bond**”) in which the City will be entitled to claim following any default of this Agreement by the Design-Builder.

## 5. COLLABORATIVE NATURE OF THE PROJECT

### 5.1 Cooperation of the Parties

- (a) Each Party must cooperate in Good Faith, at its own expense, with the other Party in the fulfillment of the purposes and intent of this Agreement. Neither Party will be under any obligation to perform any of the other Party’s obligations under this Agreement.
- (b) The Parties must work together to finalize, in accordance with Section 2.1 (*Coordination*) of the Standard Project Requirements, a stakeholder coordination plan (the “**Stakeholder Coordination Plan**”). The Stakeholder Coordination Plan will set out the parameters and rules of engagement for coordination of the Work with relevant Project stakeholders and each of the other stakeholders and their respective contractors and concessionaires identified in the Project Requirements (together, the “**Stakeholders**”), any other ongoing City construction projects, existing assets or construction projects owned or operated by the MTA or existing operational City Assets, or both, to ensure the Design-Builder is able to timely and fully comply with its obligations under this Agreement and such adjacent projects, City Assets, or any other State or City assets are not interfered with by the development of the Project. To the extent agreed by the Parties in the Stakeholder Coordination Plan, the DDC will provide for coordination of the activities of the Stakeholders and any adjacent City Assets, projects, or other State or City assets with the Work of the Design-Builder. DDC will have no obligation to agree to accept responsibility for any coordination activities, except as set forth in the Agreement, exclusive of Exhibit 8 (Design-Builder Proposal Commitments), and the DDC’s refusal to approve, in whole or in part, the Design-Builder’s proposed Stakeholder Coordination Plan that assigns responsibilities to which the DDC has not agreed, will not serve as the basis for a Delay Event. The Design-Builder is responsible for all other coordination activities not otherwise assigned to DDC in the Stakeholder Coordination Plan.
- (c) The Design-Builder and the DDC will promptly coordinate following the NTP 1 Date to schedule, plan and attend each of the meetings and workshops required to facilitate collaboration and delivery of the Project described in the Standard Project Requirements and in this Agreement, including any of the specific meetings described in Article 2 of the Standard Project Requirements. The DDC will notify the Design-Builder of the agenda, time and location of the Project Kick-off Meeting described under Article 2 (*Project Management and Coordination*) of the Standard Project Requirements.
- (d) If Other Contractors’ work requires access to the Project Site, if requested by the Design-Builder, DDC will require Other Contractors seeking access to the Project Site to execute hold harmless agreements, in a form acceptable to DDC, in favor of the Design-Builder for any activities performed by Other Contractors on the Project Site. If the Design-Builder seeks access to adjacent or other sites controlled by Other Contractors, DDC may require the Design-Builder to execute a hold harmless agreement, in a form acceptable to DDC and at no additional cost to DDC, in favor of such Other Contractors.

### 5.2 Acknowledgement with Respect to Other Contractors and the City Operations

The Design-Builder acknowledges that:

- (a) the City may award, at any time, additional contracts to contractors, and other third parties for demolition, construction and other work at or near the Project Site, all as further described in the Stakeholder Coordination Plan, including any of the Other Contractors;

- (b) the City and Stakeholders may be engaged in various activities, including construction, maintenance and operations associated with the ongoing operation and use of the City Assets; and
- (c) at all times it is essential that any of the Work and work performed by others, including Stakeholders, does not interfere with the efficient functioning of any City Asset or Adjacent Property, except as expressly provided in the Stakeholder Coordination Plan or any other Contract Document.

### 5.3 No Interference with Public or Operation of any City Asset

- (a) Except as expressly provided in the Stakeholder Coordination Plan or any other Contract Document, the Design-Builder must not interfere and must ensure that its Subcontractors do not interfere with the efficient operation of, or public access to, or use of, any City Asset (including interfering with or causing delays to vehicular or pedestrian traffic) and must ensure compliance with the applicable Standards of Performance at all times, including each of the noise control standards under Article 13 (*Environmental Requirements*) of the Standard Project Requirements and Section 15 (*Environmental*) of the Specific Project Requirements.
- (b) If the DDC determines that the Design-Builder has interfered with or is interfering with the efficient operation of, or public access to, any City Asset or any asset owned or operated by the MTA (including interfering with or causing delays to vehicular or pedestrian traffic):
  - (i) the DDC may direct the Design-Builder to take such steps as the DDC determines are necessary to cease causing such interference (including directing the Design-Builder to remove or relocate any equipment or materials that are causing the interference); and
  - (ii) the Design-Builder must promptly comply with any direction given by the DDC under Section 5.3(b)(i).
- (c) Subject to Section 5.3(d), any direction given by the DDC under Section 5.3(b)(i) must be in writing and signed or given by the DDC Representative or their designee.
- (d) In the case of an Emergency, the DDC may issue an oral direction under Section 5.3(b)(i). The DDC must confirm any oral direction in writing within three days of giving the oral direction.
- (e) If the Design-Builder fails to promptly take the steps required by the DDC under Section 5.3(b)(i):
  - (i) the DDC may take the steps that it determines are necessary to remove or mitigate the applicable interference and will notify the Design-Builder in writing of the steps it has taken; and
  - (ii) the Design-Builder must reimburse the DDC for all costs, that the DDC incurs in taking action under Section 5.3(e)(i), within fourteen days of receiving an invoice from the DDC for those costs. DDC will be entitled to deduct such amounts from payments otherwise due and owing to Design-Builder.
- (f) Any direction given by the DDC under this Section 5.3 will not entitle the Design-Builder to claim a Delay Event.

#### 5.4 MTA Coordination and Force Account

(a) Applicability

This Section applies only where performance of the Work requires the DDC to enter into a force account with the MTA.<sup>2</sup>

(b) **MTA Policies**

To the extent applicable, the Design-Builder acknowledges that the DDC will only be serving as a “pass-through entity” for purposes of coordination and communication with MTA for the Project and that the Design-Builder will be required to comply, and proactively fulfil any MTA requirements and obligations that the DDC or the Design-Builder is required to comply with in connection with the Project or the performance of the Work within the vicinity of any MTA asset. To the extent necessary to perform the Work, the Design-Builder is obligated to understand any and all MTA rules, regulations and force account support requirements and must (i) comply, on DDC’s behalf, with any such MTA requirements on a fully back-to-back basis to the same extent and to the level required by the DDC and (ii) proactively coordinate with the DDC to ensure the Design-Builder understands and possesses all information relevant to MTA necessary to perform the Work. Prior to requesting any discrete element of force account work from the MTA, the Design-Builder must work to agree on terms with the MTA regarding, at a minimum, the time, location, number of force account personnel, cost and other terms and conditions usual and customary for force account work (“**MTA Force Account T&Cs**”). The Design-Builder should promptly notify DDC to the extent the Design-Builder is unable within a reasonable period of time to come to agreement with MTA on any MTA Force Account T&Cs, and the DDC and the Design-Builder will promptly meet thereafter to develop a plan for further MTA coordination. Any MTA Force Account T&Cs will be subject to DDC’s prior written approval. Once any MTA Force Account T&Cs are approved by DDC and agreed (where feasible) in writing, the Design-Builder must comply with the terms of such MTA Force Account T&C and keep DDC regularly informed of any requests for MTA force account work under such MTA Force Account T&Cs.

(c) **Relief**

(i) The Design-Builder acknowledges that the DDC’s failure to inform the Design-Builder of an MTA requirement or obligation not otherwise requested by the Design-Builder and available to DDC will not serve a basis for a Delay Event.

(ii) To the extent that:

(A) MTA fails to perform its obligations under and in accordance with any MTA Force Account T&Cs, and such failure causes one or more Critical Path activities to be adversely impacted and delayed for a period of thirty days, in the aggregate; and

(B) the Design-Builder has satisfied its obligations under this Agreement with respect to MTA and any MTA Force Account T&Cs and has not caused or substantially contributed to any such MTA failure,

then the Design-Builder may submit a claim for a Compensable Delay Event subject to, and in accordance with, Article 27 (*Delay Events*).

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<sup>2</sup> No force account is anticipated for this Project. All known MTA facilities are more than 200 feet from the Project Site.

(d) **Force Account Costs and Indemnity**

- (i) The DDC will be responsible for paying all MTA force account costs directly to MTA for any force account support MTA provides to the Design-Builder for the performance of the Work under and in accordance with any MTA Force Account T&C. The Design-Builder will ensure at all times that the DDC has complete awareness and transparency as to any potential or actual costs incurred in connection with any MTA force account support services. The Design-Builder will limit its use of MTA force account support services to the minimum extent necessary to satisfy MTA's requirements and must not cause DDC to incur unreasonable costs and expenses for idle MTA labor.
- (ii) The Design-Builder agrees to indemnify the DDC for fifty percent of the City's payments to the MTA to the extent the Design-Builder:
  - (A) fails to achieve Substantial Completion by the applicable Guaranteed Completion Date; or
  - (B) breaches any of the Design-Builder's obligations under this Agreement or under any MTA Force Account T&C,

and in each case, such failure or breach causes the City to incur additional unreasonable or unnecessary force account charges from the MTA for such Design-Builder Party failure or breach.

5.5 **Role of the PMC**

- (a) The Design-Builder acknowledges that the DDC has engaged the PMC to act as an "owner's representative" for the implementation of the Project. Subject to the limitations in this Agreement, the PMC will support DDC in the administration, coordination, management, technical oversight and construction oversight of the Project, all as may be authorized by the DDC. The PMC's role and discretions for the Project include:
  - (i) inspect and supervise the performance of the Work, except that the PMC will not have the power to issue a Change Order or Allowance Approval in connection with a Delay Event, except as specifically designated in writing by DDC;
  - (ii) to determine the amount, quality, and location of the Work to be paid for under this Agreement;
  - (iii) excluding any legal interpretations or questions, which will be reserved for DDC, to determine all questions in relation to the Work, to interpret the Contract Drawings, Specifications, and Addenda, and to resolve all patent inconsistencies or ambiguities;
  - (iv) to determine how the Work will be coordinated with Work of Other Contractors engaged on BBJ, including the power to suspend any part of the Work, but not the whole of the Work;
  - (v) to approve any Minor Waivers, subject to, and in accordance with this Agreement; and
  - (vi) without limiting the above, to review, comment, and where delegated by DDC approve any Submittals required under this Agreement.

- (b) The DDC Representative will designate, in writing, members of the PMC to exercise the above authority. Determinations, including approval of Submittals, will not be binding on DDC except where made or issued by designated members of the PMC.

## 6. UTILITIES

### 6.1 Utilities Required for the Work

- (a) Subject to Section 6.2(b), the Design-Builder will be responsible for obtaining at its cost, all Utilities that it requires to undertake and timely complete the Work, all in accordance with the Standard Project Requirements.
- (b) From the date of Substantial Completion, the DDC will permit (where reasonably available and approved in writing by DDC) the Design-Builder to reasonably use the permanent power at the Project Site, at no cost to the Design-Builder, for the purpose of performing the Work.

### 6.2 Utility Relocations

- (a) The Design-Builder is responsible for coordinating and causing all Utility Relocations that are necessary in order to comply with its obligations under this Agreement. The Design-Builder will fulfill this responsibility either by performing the Utility Relocations itself, or by reimbursing any applicable Utility Owner for the Utility Relocation.
- (b) The Design-Builder must ensure that all Utility Relocations, whether performed by the Design-Builder or the Utility Owner, comply with this Agreement and do not unreasonably affect any other party.
- (c) The Design-Builder must preserve the integrity of, and maintain the ability of the City and Utility Owners (or its contractors and suppliers) to use and operate, Utilities that are not required to be relocated.

### 6.3 Failure of Utility Owners to Cooperate

- (a) The Design-Builder must notify the DDC promptly if:
  - (i) any Utility Owner will not undertake or permit a Utility Relocation in a manner consistent with the timely completion of any portion of the Project or in accordance with the Standards of Performance, any Governmental Approval or the Contract Documents;
  - (ii) any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals; or
  - (iii) any other dispute arising as it pertains to coordinating a Utility Owner with respect to the Project, despite the Design-Builder's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute.

Such notice may include a request that the DDC assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. The Design-Builder must provide the DDC with such information as the DDC requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Design-Builder's Project Schedule. Subject to any restrictions regarding any Utility, after delivering to the DDC any notice or request for assistance, the Design-Builder must continue to use diligent efforts to pursue the Utility Owner's cooperation.

- (b) If the Design-Builder requests the DDC's assistance pursuant to Section 6.3(a), then the following provisions will apply:
- (i) the Design-Builder must provide evidence reasonably satisfactory to the DDC that the following "**conditions to assistance**" have been satisfied:
    - (A) the subject Utility Relocation or other request of the applicable Utility is necessary;
    - (B) the time for completion of the Utility Relocation or other applicable request of the Utility in the Project Schedule was, at its inception, a reasonable amount of time for completion of such work;
    - (C) the Design-Builder has made (where reasonably feasible) diligent efforts (including regular and routine contact and follow-up with the Utility) to obtain the Utility Owner's cooperation; and
    - (D) the Utility Owner is not cooperating;
  - (ii) following the DDC's receipt of satisfactory evidence of the conditions to assistance, the DDC will take such reasonable steps as the Design-Builder may request to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, the DDC will have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under Applicable Law or existing contract unless the DDC elects to do so in its absolute discretion; and
  - (iii) any assistance the City provides will not relieve the Design-Builder of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Relocation Work or Utility Owner coordination, as applicable, except to the extent the Design-Builder is entitled to claim a Compensable Delay Event for Utilities set out in clause (i) of the definition of Delay Event in Exhibit 1 (*Definitions*).
- (c) If the DDC objects in writing to a request for assistance based on the Design-Builder's failure to satisfy one or more of the conditions to assistance, then the Design-Builder must take such action as is appropriate to satisfy the condition(s) and will then have the right to submit another request for assistance on the same subject matter.

## **PART B – THE WORK**

### **7. PERFORMANCE OF THE WORK**

#### **7.1 Scope of Work and General Obligations**

##### **(a) Performance Generally**

In performing the Work, as further described in the Project Requirements, the Design-Builder, in addition to performing all other requirements in the Contract Documents must furnish all Design Work and Construction Work, including all engineering and other services, provide construction management, Quality Controls, Quality Assurance and quality management and all work, including all materials, equipment, labor, and installations, and undertake all efforts necessary or appropriate to construct the Project in accordance with the Project Requirements, so as to achieve Substantial Completion and Final Completion by the applicable Guaranteed Completion Date set out in this Agreement.

(b) **Requirements and Standards**

Subject to the terms of this Agreement, the Design-Builder must perform the Work in accordance with the following “**Standards of Performance**”:

- (i) the Project Requirements and all other requirements of the Contract Documents;
- (ii) Best Management Practice;
- (iii) the Applicable Standards;
- (iv) all Applicable Laws;
- (v) the requirements of all Governmental Approvals; and
- (vi) the orders, directions and requirements of the DDC.

(c) **Means and Methods**

The means and methods of performing the Work will be in the Design-Builder’s discretion in accordance with, and subject to, the terms of this Agreement.

(d) **Notices to Proceed (NTPs)**

- (i) The provisions of this Agreement will not be in effect until, and the terms of this Agreement will only become in full force and effect following, the date of DDC’s issuance of the first NTP (the “**NTP 1 Date**”) authorizing Design-Builder, subject to Section 7.3 (*Access to Project Site*) and Section 7.5 (*Commencement of Construction Work*), to commence all Work, subject to registration pursuant to section 328 of the City Charter. Any Work commenced prior to the NTP 1 Date will be at the Design-Builder’s risk and the Design-Builder will not be entitled to compensation under this Agreement until after the NTP 1 Date.
- (ii) DDC will also issue one or more subsequent NTPs for the Design-Builder to (A) access the Project Site under Section 7.3 (*Access to Project Site*), (B) commence intrusive site validation Work under Section 7.5(a) and (C) commence all other Construction Work under Section 7.5(b).

7.2 **Design Work**

(a) **Generally**

The Design-Builder must ensure that all Design Work is undertaken by qualified architectural and design professionals licensed as required by the Standards of Performance to perform the Work.

(b) **Submittals**

The Design-Builder must submit to the DDC all Design Documents (including Final Design Documents) for the DDC’s review and comment, or approval with respect to Release for Construction Documents, as applicable in accordance with (i) Article 13 (*Submittals*), (ii) the submittal procedures described in Article 8 (*Submittal Procedures*) of the Standard

Project Requirements, and (iii) any other timeframes and requirements set out in the Project Requirements.

(c) **PDC Modifications**

- (i) The Design-Builder acknowledges that prior to obtaining a permit to commence Construction Work the DDC must first obtain PDC's approval of the Design-Builder's Design Documents in accordance with Applicable Law and PDC's policies.
- (ii) To the extent the DDC advises the Design-Builder of any PDC proposed or required changes to the Design-Builder's Design Documents and the Project, the Design-Builder must properly respond and provide a cost-estimate, time impacts, if any, and feasibility response to any such request utilizing the same level of detail for a Design-Builder Proposal under Section 26.2 (*Design-Builder Proposal*).
- (iii) Once PDC's modifications are accepted by DDC and issued to the Design-Builder in writing, the Design-Builder must implement such modifications in accordance with its Design-Builder Proposal.
- (iv) To the extent any modification or alternative required by DDC as a result of PDC's requests under the above process causes a material delay to the Critical Path or increases Net Costs to the Design-Builder to implement, and in each case, is not otherwise required by this Agreement (including the Project Requirements), the Design-Builder may submit a claim for a Compensable Delay Event under, and in accordance with, Article 27 (*Delay Events*).

(d) **Design Document Completion**

The Design-Builder must ensure that the Final Design Documents, Release for Construction Documents and Record Drawings:

- (i) satisfy all the Project Requirements and Governmental Approvals; and
- (ii) are Signed and Sealed by the Engineer of Record or the Architect of Record, as applicable, in accordance with Applicable Law.

**7.3 Access to Project Site**

(a) **Project Site Access**

Subject to the Design-Builder satisfying each of the requirements below, the DDC will issue an NTP and grant the Design-Builder and its Subcontractors a non-exclusive right to enter and access the Project Site or portions of the Project Site in accordance with Exhibit 10 (*Project Site*), subject to Section 7.5 (*Commencement of Construction Work*) for the sole purpose of performing the Work until Final Completion:

- (i) the Design-Builder has provided the DDC with certificates of insurance evidencing that it has procured, put in place and is maintaining in force, all insurances required to be provided by the Design-Builder under this Agreement to access the Project Site and perform the relevant Work;
- (ii) the Design-Builder has delivered the Site Safety Plan and all other plans and Submittals required to be submitted to and approved by the DDC to gain access to the Project Site, and the DDC has approved these plans, prior to the Design-

Builder gaining access to the Project Site or the relevant portion of the Project Site, as applicable; and

- (iii) the Design-Builder has satisfied all other requirements in the Contract Documents necessary to commence the applicable Work on the portion of the Project Site requested in accordance with the Project Site Access Schedule.

(b) **Staging Area**

The Project Site will be the only area the City will make available to the Design-Builder to perform the Work, including any equipment staging, office space (where applicable) or material storage (“**Staging**”).

(c) **General Site Access Requirements**

- (i) The Design-Builder’s right of access to the Project Site will be subject to the Design-Builder complying with the Standards of Performance, certifications and all other requirements of this Agreement with respect to access (including the requirements in the Standard Project Requirements with respect to security and being escorted, where applicable).
- (ii) This Agreement does not constitute a lease to the Design-Builder or a grant of any right, title, interest or estate in the Project or the Project Site.
- (iii) Any additional property that the Design-Builder requires for its performance of the Work (including additional Staging or temporary lay-down areas) must be obtained at its own expense.
- (iv) The Design-Builder will be permitted to use only so much of the applicable portions of Temporary Access Areas as are necessary for its performance of the Work at any one time during a Project. To the extent the Design-Builder has completed any Work required to be performed on, or within, any Temporary Access Areas, the Design-Builder must vacate and return such Temporary Access Areas back to the DDC in a condition that it was in prior to the Design-Builder gaining such Temporary Access Areas. The Design-Builder will only be entitled to utilize a Temporary Access Areas for the period of time indicated in Exhibit 10 (*Project Site*). To the extent the Design-Builder requires extension of such time-period (which is not caused by a Delay Event), the Design-Builder must promptly request such extension in advance in writing, and the DDC may reject or grant any such extension in its absolute discretion. To the extent such extended Temporary Access Areas causes Losses to the City, the Design-Builder must agree to indemnify and reimburse the City for any such Losses. Any extension that is caused by a Delay Event, must be requested as part of the relief under Article 27 (*Delay Events*).
- (v) The DDC may at any time make joint or exclusive assignments of particular portions of the Project Site to the Design-Builder or to others in accordance with any Project Stakeholder Coordination Plan and may take over and use for other purposes any portions that, in the DDC’s discretion, are not required for the Design-Builder’s performance of the Work.
- (vi) Without limiting any other requirements under this Agreement with respect to the Project Site, the Design-Builder is responsible for:
  - (A) securing the Project Site at all times;

- (B) daily removal of all refuse, rubbish, scrap material and debris; and
- (C) clearing snow in accordance with the Project Requirements to avoid encroaching or otherwise interfering with any adjacent site, Project Site Stakeholders or the normal and efficient functioning of the City Assets.

7.4 **[Reserved]**

7.5 **Commencement of Construction Work**

The Design-Builder will only be permitted to commence:

- (a) any physically intrusive site validation investigation Work (e.g. geotechnical borings, wall samplings, etc.) necessary to identify any unknown site conditions during the Site Validation Period, upon requesting access to the Project Site to perform site validation investigation Work and demonstrating to DDC that it has satisfied any Standards of Performance for gaining physical access to the Project Site. DDC will issue an NTP to the Design-Builder once it is satisfied that the Design-Builder has fulfilled all requirements to commence any physically intrusive site validation investigation Work;
- (b) any other portion of the Construction Work, when:
  - (i) the Site Safety Plan for the applicable Construction Work has been approved and the Design-Builder has designated a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Site Safety Plan;
  - (ii) the DDC has approved the Project Management and Execution Plan in accordance with Section 2.1 (*Coordination*) of the Standard Project Requirements;
  - (iii) the Design-Builder has satisfied the applicable meeting requirements in Article 2 (*Project Management and Coordination*) of the Standard Project Requirements;
  - (iv) the DDC has approved the BIM Execution Plan in accordance with Article 5 (*BIM Coordination*) of the Standard Project Requirements;
  - (v) all applicable Governmental Approvals necessary to commence Construction Work have been obtained;
  - (vi) the applicable Final Design Documents have been approved by, and provided to, the DDC for the portion of Construction Work to be performed;
  - (vii) any other requirements under this Agreement necessary to commence performance of the applicable Construction Work have been satisfied; and
  - (viii) DDC has issued an NTP for the Design-Builder to commence Construction Work.

7.6 **Title to Work Product**

- (a) All Work Product, as applicable, will be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and upon delivery of Work Product (excluding Licensed Work Product) to the DDC, the City will:
  - (i) own all rights, title and interest in the Work Product (free and clear of all Claims, liens, encumbrances, and security interests); and

- (ii) all Intellectual Property in the Work Product.
- (b) The Design-Builder grants a nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid up right and license to use, reproduce, modify, adapt, disclose to and sublicense to other persons engaged by or on behalf of the City (directly or indirectly) the Licensed Work Product and Intellectual Property in the Licensed Work Product. Except as may be limited by the DDC for security or safety reasons, the Design-Builder will continue to have a full and complete right to use any and all duplicates or other originals of its Licensed Work Product in any manner it chooses.
- (c) If requested by the DDC, the Design-Builder must (at no cost to the DDC) promptly execute all documents and perform all other acts that the DDC determines may be necessary (if any) to ensure that the City's right, title and interest in the Work Product are protected and enforceable.
- (d) The Design-Builder will promptly and fully report to the DDC any discovery or invention arising out of or developed in the course of performance of this Agreement.
- (e) The Design-Builder acknowledges that as a result of the rights conferred on the City under this Section 7.6, without limiting any other rights the City may have, the City may use, reproduce and publish, as applicable, the Work Product for any purpose and at any time without any obligation to notify, or seek permission from, the Design-Builder.
- (f) The Design-Builder represents and warrants that the Work Product: (i) is wholly original material not published elsewhere (except for material that is in the public domain); (ii) does not violate any copyright law; (iii) does not constitute defamation or invasion of the right of privacy or publicity; and (iv) is not an infringement, of any kind, of the rights of any third party. To the extent that the Work Product incorporates any non-original material, the Design-Builder has obtained all necessary licenses, permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which will be provided to the DDC upon execution of this Agreement; provided, however, that the City's use of the Work Product for any other project or procurement (excluding this Project) will be at the City's risk and the Design-Builder:
  - (i) makes no representation or warranty that the Work Product is suitable for use on another project or procurement; and
  - (ii) will not be liable for any Losses incurred by the City arising out of the use of the Work Product on any other project or procurement.

In no case will this Section 7.6 apply to, or prevent the Design-Builder from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

#### **7.7 Title to Construction Work**

- (a) Title to all Construction Work will pass to the City free and clear of all Claims, liens, encumbrances, and security interests upon the incorporation of the Construction Work into the Project, or upon the Design-Builder's receipt of payment for the Construction Work, whichever occurs first. Notwithstanding such title transfer, risk of loss of any Construction

Work or Work Product will remain with the Design-Builder until Substantial Completion of the Project.

- (b) If requested by the DDC, the Design-Builder must (at no cost to the DDC) promptly execute all documents and perform all other acts that the DDC determines may be necessary (if any) to ensure that the City's right, title and interest in the Construction Work passes to the City in accordance with Section 7.7(a).

## 7.8 Minor Waiver Requests

The Design-Builder may make a written request to the DDC in the form attached as Exhibit 17 (*Minor Waiver Request Form*) to make Minor Waivers to the Project Requirements consistent with the intent of the Contract Documents. Any such Minor Waiver request may only be implemented by the Design-Builder if such Minor Waiver request form attached as Exhibit 17 (*Minor Waiver Request Form*) is signed in writing by the DDC. All Minor Waiver requests must certify that such Minor Waiver (i) will not impair or diminish any Project Requirement, (ii) will not cause a delay to achieving any Guaranteed Completion Date and (iii) will not cause the DDC to incur any additional cost or expense to complete the Project. The Design-Builder will be responsible for all costs associated with the burden of proof that the proposed Minor Waiver is compliant and conformant with the program requirements if such request is made by the DDC. All such approved Minor Waiver requests are deemed part of the Contract Documents.

## 7.9 Furniture, Fixtures and Equipment

### (a) Generally

Except for FF&E, the Design-Builder must furnish, pay for and install all other fixtures and equipment required for the Project as part of its Lump Sum Amount. All furniture, fixtures and equipment (the "FF&E") will be furnished, paid for and installed by the Design-Builder in accordance with the terms of this Section 7.9. A matrix of the categories of expected FF&E is included in Part A, Section 2.2 (*Architectural Design Criteria*) of the Specific Project Requirements.

### (b) Selection and Installation of Deferred Furniture, Fixtures and Equipment

- (i) **Coordination** - At least six months prior to the Guaranteed Completion Date for Substantial Completion:
  - (A) the Design-Builder must identify, itemize, and select all FF&E based on the matrix of categories in Part A, Section 2.2 (*Architectural Design Criteria*) of the Specific Project Requirements; and
  - (B) once DDC has received the Design-Builder's proposed itemized list of FF&E, the Parties must promptly organize and commence a meeting to (1) obtain DDC's approval (in its sole discretion) of such list of FF&E and (2) plan and schedule for the Design-Builder's procurement, acquisition, delivery and installation of the FF&E (a "**FF&E Plan**").
- (ii) **Finalization of the FF&E List** - The Parties must finalize the FF&E Plan no later than four months prior to the Guaranteed Completion Date. The Design-Builder will be responsible for the procurement of the FF&E approved by the DDC under the FF&E Plan. DDC will notify the Design-Builder of the locations where FF&E is to be installed or placed, and the Design-Builder will be responsible for accepting delivery of all FF&E and for the proper placement and installation or placement of such items according to DDC's direction and the terms of this Agreement.

(c) **Payment and Reimbursement for FF&E.**

Unless otherwise directed, Design-Builder must seek a minimum of three competitive bids or price quotations for FF&E (to include delivery, installation and assembly) identified and selected by the DDC. Once received, the Design-Builder must submit such bids or quotes to the DDC for its approval, and upon approval, the Design-Builder may enter into purchase orders and make direct payments to such third-party vendors and suppliers, subject to any applicable requirements under this Agreement for the contracting of suppliers and vendors.

(d) **Reimbursement.**

Upon receipt, placement or installation of any FF&E in accordance with this Agreement, the Design-Builder may submit an applicable Allowance Payment Request to the DDC for any such FF&E costs in accordance with Section 22.4(d) (*Allowances*).

7.10 **[Reserved]**

7.11 **Reporting**

The Design-Builder must submit to the DDC Daily Progress Reports and Monthly Progress Reports in accordance with Article 6 (*Progress Documentation - CPM*) of the Standard Project Requirements. Subject to Section 45.1 (Confidentiality), the DDC may share these reports with Stakeholders and with any other Person.

8. **QUALITY ASSURANCE, QUALITY CONTROL, INSPECTION AND MONITORING**

8.1 **Quality Assurance and Quality Control**

The Design-Builder is responsible for the quality of the Work and must:

- (a) develop, maintain and implement a Quality Management Program in accordance with this Agreement and Article 9 (*Quality Requirements*) of the Standard Project Requirements and Best Management Practice; and
- (b) perform all Quality Control and Quality Assurance activities (including all reviews, inspections, testing and monitoring) with respect to all Work in accordance with this Agreement and Article 9 (*Quality Requirements*) of the Standard Project Requirements and Best Management Practice. Subject to the warranty provisions in Part F (Warranties, Defects and Liability), prior to Final Completion, the Design-Builder must rectify, replace and fix any nonconforming Work discovered at any time during the Design-Builder's performance under this Agreement, to the reasonable satisfaction of the DDC.

8.2 **The DDC's Rights to Witness and Uncover Construction Work**

- (a) During the progress of the Work and up to the date of the DDC's issuance of the Certificate of Final Completion, the Design-Builder must at all times afford the representatives of the City every reasonable, safe, and proper facility for inspecting all Work done or being done at the Project Site and also for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.
- (b) The Design-Builder must ensure that it provides the DDC with reasonable advance notice (as specified in Article 9 (*Quality Requirements*) of the Standard Project Requirements) of, and the opportunity to witness, all inspection and test activity with respect to the Construction Work in accordance with Article 9 (*Quality Requirements*) of the Standard Project Requirements.

- (c) If the Design-Builder does not provide the DDC with the required notice and opportunity to inspect the Construction Work, then the Design-Builder must, at the DDC's request, promptly uncover any relevant part of the Construction Work which has been covered up or otherwise put out of view, to permit the DDC to inspect the relevant Construction Work, all in accordance with Article 9 (*Quality Requirements*) of the Standard Project Requirements. The Design-Builder will bear all costs of uncovering or removal of any Construction Work, regardless of whether or not any defect or nonconformance is discovered in the relevant Construction Work.

## 9. SAFETY AND SAFETY COMPLIANCE ORDERS

### 9.1 General

In performing the Work, the Design-Builder must exercise, and must ensure that its Subcontractors exercise, every precaution to prevent injury to persons and Stakeholders (including workers and the public) or damage to City Assets or any other property, as applicable. The Design-Builder assumes complete responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work, in accordance with the Site Safety Plan.

### 9.2 Safety Compliance Orders

- (a) The DDC may at any time issue a Safety Compliance Order.
- (b) Subject to Section 9.2(c), a Safety Compliance Order must be in writing and signed by the DDC Representative.
- (c) In the case of an Emergency, the DDC may issue a Safety Compliance Order orally. The DDC must confirm any oral Safety Compliance Order in writing within three days of giving the oral order. To the extent that a Safety Compliance Order and a Suspension Order derive from, or are related to, the same event or occurrence, the DDC may issue one combined order including the terms of both such orders.

### 9.3 Duty to Comply

- (a) If the DDC issues a Safety Compliance Order, the Design-Builder must proceed, at its sole cost and expense, subject to Article 27 (*Delay Events*), to carry out the Safety Compliance Order, as expeditiously as possible.
- (b) The Design-Builder must undertake Reasonable Efforts to overcome any inability to comply with any Safety Compliance Order caused by a Delay Event.
- (c) Any Safety Compliance Order issued in response to matters referred to in Section 9.2 will cease to apply as soon as the relevant matter has been rectified or remedied to the DDC's satisfaction.

### 9.4 Information Security

The Design-Builder must implement security policies to protect City data consistent with the City's Cybersecurity Requirements for Vendors and Contractors, available here: <https://www1.nyc.gov/site/doitt/business/it-security-requirements-vendors-contractors.page>.

## 10. SITE VALIDATION

### 10.1 Inspection of Site Conditions

- (a) The Design-Builder must undertake all tests, inspections and investigations of the Project Site (including additional geotechnical evaluations, Hazardous Materials or Utility studies) as the Design-Builder deems necessary to perform its obligations under this Agreement.
- (b) The Design-Builder must provide the DDC promptly with copies of all reports or analyses generated by the Design-Builder's tests, inspections and investigations of the Project Site.

## 10.2 Site Validation Period

### (a) Generally

Subject to satisfying the requirements in Section 7.5(a) (*Commencement of Construction Work*), the Design-Builder may enter the Project Site for the purpose of undertaking tests, inspections and investigations of the Project Site (including additional geotechnical evaluations, Hazardous Materials or Utility studies) subject to complying with all security and other access requirements set out in this Agreement.

### (b) Entitlement to an Allowance Payment Request or Change Order

- (i) If the Design-Builder identifies any Unknown Archaeological Remains, Unknown Endangered Species, Unknown Utilities, Unknown Hazardous Environmental Conditions, Unknown Physical Conditions or Unknown Geotechnical Conditions, subject to complying with Section 10.3 (*Discovery of Unknown site conditions*) below, it may request a Compensable Delay Event under Article 27 (*Delay Events*).
- (ii) The Design-Builder may only request a Compensable Delay Event under Article 27 (*Delay Events*) for any Unknown Geotechnical Condition or Unknown Physical Condition if the Design-Builder submits the applicable Initial Delay Event Notice before the end of the Site Validation Period.
- (iii) The Design-Builder will not be entitled to a Compensable Delay Event, on the basis of the conditions or subsurface conditions at the Project Site described in Section 10.2(b)(ii) that are identified or discovered after the Site Validation Period.

### (c) Extension to Site Validation Period

The Parties recognize that the Design-Builder may be unable to conduct the investigations contemplated by this Section 10.2 because it will not (without any fault of the Design-Builder) be permitted by the DDC to have access to certain areas or portions of the Project Site within the Site Validation Period to perform reasonable and necessary investigations on, or within, portions of the Project Site. The Design-Builder must notify the DDC within fifteen days of the NTP 1 Date of all non-accessible areas and the dates upon which these areas are expected to become accessible. If the DDC agrees that these areas are not-accessible, then, for the limited purpose of performing Project Site validation solely within such non-accessible areas, the Site Validation Period will be extended for the period of time such areas were inaccessible, not to exceed the amount of time otherwise indicated in the definition of Site Validation Period. If the DDC, acting reasonably, does not agree that these areas are non-accessible, then the Site Validation Period will not be extended.

## 10.3 Discovery of Unknown Site Conditions

If at any time during the performance of the Work, the Design-Builder becomes aware of any Unknown Site Condition or has cause to suspect the presence of an Unknown Site Condition, the Design-Builder must:

- (a) where required to comply with its safety obligations:
  - (i) promptly stop the Work affected by the Unknown Site Condition, secure the area against injury to persons or damage to property; and
  - (ii) promptly (but not later than two days) notify the DDC (verbally followed by written notification) of the Unknown Site Condition and the steps that the Design-Builder intends to take to comply with its safety obligations; and
- (b) where the Unknown Site Condition may lead to a claim for a Compensable Delay Event under Article 27 (*Delay Events*) or otherwise adversely impact the Work, promptly notify the DDC (verbally followed by written notice) and specify in any notification (in addition to meeting all the timing, notice and other applicable requirements set forth in Article 27 (*Delay Events*)):
  - (i) the nature and location of the Unknown Site Condition; and
  - (ii) the impact that the Unknown Site Condition will have on the Work.

## 11. GOVERNMENTAL APPROVALS

### 11.1 Design-Builder Responsibility for Governmental Approvals

- (a) Except with respect to the DDC's responsibility for City Governmental Approvals set forth in Section 11.2 (*City Governmental Approvals*), the Design-Builder is responsible for diligently pursuing (exercising all reasonable diligence and efforts and affirmative coordination and communications in accordance with Best Management Practice in the City) and obtaining all Governmental Approvals (including any application, revision, modification, amendment, supplement, renewal or extension) required in connection with its performance under this Agreement, all at its sole cost and expense.
- (b) The Design-Builder must apply for, and submit or file any information required to obtain any Governmental Approval in its own name, and may only do so after obtaining written approval from the DDC for such application, submission or filing; provided, however, that if such Governmental Approval may only be held in the name of the DDC or other City department or entity (a "**DDC Name Only Governmental Approval**"), and the DDC has approved such action in advance, in writing, then any application or information may lawfully be submitted by the Design-Builder in the DDC's name.
- (c) The Design-Builder will be responsible for all Work necessary to prepare, submit and obtain the DDC Name Only Governmental Approvals. Notwithstanding Section 11.1(b), where identified by DDC, the Design-Builder may only submit applications or information for certain DDC Name Only Government Approvals for a Governmental Entity's review and approval through the DDC (and not directly) and the DDC will (subject to its review of such Submittal for completeness) submit applications or information for such DDC Name Only Governmental Approval on behalf of the Project. To the extent DDC believes any such DDC Name Only Governmental Approval should be corrected either before or after submission to any such Governmental Entity, the Design-Builder must promptly modify and re-submit such DDC Name Only Governmental Approval to DDC for its submission or re-submission, as applicable, to the relevant Governmental Entity. This process will continue until the applicable Governmental Entity issues a permit or approval of the DDC Name Only Governmental Approval. The Design-Builder should afford adequate time for this DDC review and submission in its Project Schedule.

### 11.2 City Governmental Approvals

- (a) The DDC is responsible for obtaining and maintaining any City Governmental Approvals required for the Project. The Design-Builder will provide reasonable assistance to the DDC in maintaining and obtaining any such City Governmental Approvals, including providing to the DDC information and documentation required to obtain any City Governmental Approvals reasonably requested by the DDC in connection with the applications for such City Governmental Approvals.
- (b) Subject to first receiving the DDC's prior written approval, the Design-Builder may seek and is responsible for obtaining any modifications, revisions, renewals, extensions, supplements or amendments to any City Governmental Approvals as may be necessary to reflect its Release for Construction Documents or means and methods in performing the Work.
- (c) If any necessary changes under Section 11.2(b) are not permitted by the applicable Governmental Entity issuing such City Governmental Approvals, the Design-Builder must, at its own risk of delay and cost and subject to the DDC's approval, revise or alter its Design Documents or means and methods, or both, as necessary to satisfy the requirements and conditions of the applicable City Governmental Approvals as directed by the Governmental Entity issuing such approval.
- (d) The Design-Builder must afford adequate time for the DDC to review any required amendments described in this Section.

### 11.3 **Copies of Applications, Governmental Approvals & Log of Governmental Approvals**

- (a) Within five Business Days after either (i) submitting an application or other information (including an amendment, revision, modification, supplement, renewal or extension) for, or obtaining, a Governmental Approval or (ii) receiving a request for information or other response to such application or information from a Governmental Entity, the Design-Builder must deliver to the DDC true and complete copies of any documents submitted to or received from a Governmental Entity with respect to such application or Governmental Approval.
- (b) The Design-Builder must prepare and maintain a log of all Governmental Approvals to be obtained by the Design-Builder and the status of each. The Governmental Approvals log must be an attachment to the Monthly Progress Report.

## 12. **ENVIRONMENTAL COMPLIANCE, SUSTAINABILITY & LEED CERTIFICATION**

### 12.1 **Environmental Requirements**

Where required by Applicable Law and any other applicable Standards of Performance, the Design-Builder must, in accordance with Article 12 (*Sustainability Requirements*), Article 13 (*Environmental Requirements*) and Article 14 (*Construction Waste Management & Disposal*) of the Standard Project Requirements:

- (a) design and construct the Project so that it complies with, and can be operated in compliance with, all Environmental Requirements; and
- (b) perform the Work in compliance with all Environmental Requirements.

Unless otherwise expressly provided in this Agreement, the Design-Builder is responsible for all Environmental Requirements, including all associated costs, Losses, liabilities and damages and obtaining any surety bond or Governmental Approval or providing any financial assurance that may be required in connection with the Work.

## 12.2 Hazardous Materials

### (a) General Obligations

As part of the Work, the Design-Builder is responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of all Hazardous Materials that are encountered in, under or on the Project Site during performance of the Work, in each case so as to be in full compliance with all Standards of Performance and the Contract Documents.

### (b) DDC Inspection

Before any Remedial Action is taken that would inhibit the DDC's ability to ascertain the nature and extent of the relevant Hazardous Environmental Condition, Design-Builder will afford the DDC the reasonable opportunity to inspect the areas and locations that require Remedial Action within a reasonable time period; provided, that in the case of a sudden Hazardous Materials Release, Design-Builder may take action necessary to stabilize and contain the Hazardous Materials Release without prior notice or inspection, but will immediately notify the DDC of the sudden Hazardous Materials Release and its location; provided, further, that nothing in this provision prevents Design-Builder from complying with Applicable Law or the requirements of any Governmental Entity.

### (c) Approvals

Subject to the terms of the Contract Documents, Design-Builder will (without accepting or assuming responsibility under any Applicable Law) be responsible for obtaining and maintaining all Governmental Approvals relating to any Remedial Action and will be solely responsible for compliance with all Governmental Approvals and Applicable Laws concerning or relating to Hazardous Materials in respect thereof. In carrying out any Remedial Action that is the subject of a Compensable Delay Event, Design-Builder will take such steps and actions as the DDC may reasonably require in order to protect and preserve the City's potential claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties, provided that such steps and actions are not inconsistent with all Applicable Laws and the requirements of the Contract Documents and any relevant Governmental Entities or Governmental Approvals.

### (d) Remedial Action Cost and Relief

(i) **Generally** - Other than in connection with Unknown Hazardous Environmental Conditions and any Remedial Action covered by an Allowance, all Remedial Action and any other Work required under this Section will be at the Design-Builder's cost and expense.

(ii) **Demolition** - Unless otherwise approved by the DDC, to ensure demolition debris are not, under Applicable Law, classified as regulated Hazardous Materials, all such Hazardous Materials must be removed prior to any Demolition Work required under this Agreement. To the extent the Design-Builder does remove any Hazardous Materials in connection with, or as part of, any such Demolition Work in violation of the above, such Remedial Action will be excluded from any potential Net Costs the Design-Builder may be entitled to claim as a Compensable Delay Event. To the extent that the Design-Builder complies with the above requirements, the Design-Builder will be entitled to claim a Compensable Delay Event where any such Hazardous Materials still cause an increase in Net Costs for such demolition, handling, transport, removal or disposal of demolition debris above the costs that

would otherwise have been incurred performing such Demolition Work on solid wastes.

- (iii) **Compensable Delay Event Limitation** - The costs of handling, transport, removal or disposal of excavation of excavated soil, debris and other materials (including dewatering) that include Hazardous Materials may be recovered in connection with a Compensable Delay Event only to the extent that such costs are not included in the Lump Sum Amount and therefore would not have been incurred in connection with the handling, transport, removal or disposal of such materials absent the presence of such Hazardous Materials.

(e) **Generator Status**

As between the DDC and the Design-Builder:

- (i) the Design-Builder will be deemed the sole generator and arranger under 40 C.F.R. Part 262 with respect to any Hazardous Materials brought to the Project Site by the Design-Builder or a Design-Builder Party or released by the Design-Builder. The Design-Builder agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity; and
- (ii) the City will be deemed the sole generator and arranger under 40 C.F.R. Part 262 with respect to (i) Pre-existing Hazardous Material that is transported from the Project Site for disposal by the Design-Builder in accordance with this Agreement and (ii) any Hazardous Materials that is transported from the Project site for disposal by the Design-Builder in accordance with this Agreement for which the Design-Builder is not deemed the generator or arranger pursuant to Section 12.2(e)(i). The City agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity.

Nothing in this Section may be interpreted as an indemnification from the City to the Design-Builder with respect to disposal of waste materials associated with the Work at any location or the handling, shipment, transport or disposal of waste materials other than in compliance with this Agreement and all Environmental Requirements.

12.3 **LEED Certification**

- (a) Without limiting its other obligations under this Agreement, the Design-Builder must in accordance with City Administrative Code Section 224.1 ("**City Green Building Standards**"):
  - (i) design and construct the Project and complete all necessary prerequisites, record keeping, standards, credits and points required for the City to be able to (i) achieve, at a minimum, LEED Gold Certification, as set forth in the Project Requirements and (ii) obtain as many additional credits that are reasonably obtainable consistent with Best Management Practice, the Project Requirements and the City Green Building Standards;
  - (ii) design and construct all other parts of the Project in accordance with the Applicable Laws regarding sustainability and green building, as further described in the Project Requirements;

- (iii) formally apply for LEED Gold Certification of the Project following the Substantial Completion, but prior to Final Completion;
- (iv) grant LEED online access to the DDC's sustainable design manager (the "**Sustainable Design Manager**") (and any other City personnel designated by the Sustainable Design Manager);
- (v) up to Final Completion, pursue the application process with due diligence to enable the City to obtain LEED Gold Certification for the Project; and
- (vi) final rejection by the U.S. Green Building Council, as applicable, of the LEED Gold Certification application or any portion of the application will constitute a Design-Builder Default and entitle the DDC to take any actions and perform any work reasonably necessary to ensure the Project achieves LEED Gold Certification or an equivalent certification, as applicable, as otherwise may be permitted under the City Green Building Standards and will reimburse the City for any costs, losses or damages reasonably incurred as a result of the City's inability to timely achieve LEED Gold Certification, including, any amounts expended by the City in order for the Project to qualify for LEED Gold Certification or any other City approved equivalent.

(b) **Sustainability Lead**

The Design-Builder must appoint a person who is a USGBC LEED Accredited Professional – Building Design + Construction (AP BD+C) certified professional to act as the sustainability lead (the "**Sustainability Lead**") for the Work to coordinate and monitor the Design-Builder's compliance with the sustainability requirements of this Agreement.

13. **SUBMITTALS**

13.1 **General**

The terms and procedures in this Article 13 and Article 8 (*Submittal Procedures*) of the Standard Project Requirements generally govern Submittals protocols to the DDC under this Agreement.

13.2 **Schedule of Submittals**

- (a) Within thirty days of the NTP 1 Date, the Design-Builder must deliver to the DDC for its approval, the Design-Builder's initial proposed schedule of Submittals of Design Documents, Construction Documents and other Submittals that the Design-Builder is required to make under this Agreement ("**Initial Schedule of Submittals**"). The Schedule of Submittals must satisfy the requirements in Article 8 (*Submittal Procedures*) of the Standard Project Requirements and identify the type of Submittal, either Mandatory DDC Approval Submittal, Deemed Approval Submittal or Review and Comment Submittal.
- (b) In accordance with Article 8 (*Submittal Procedures*) of the Standard Project Requirements, within ninety days of the NTP 1 Date, the Design-Builder must deliver to the DDC for its approval, an updated, more detailed version of the Initial Schedule of Submittals reflecting any comments from the DDC on the Initial Schedule of Submittals and the Parties' discussions and coordination from the date of the DDC's approval of the Initial Schedule of Submittals ("**Schedule of Submittals**").
- (c) If there is any conflict between the deadlines for the delivery of Submittals by the Design-Builder or the DDC response periods provided in an agreed Schedule of Submittals and

any provision of this Agreement, the deadlines and response periods in the agreed Schedule of Submittals will take precedence.

### 13.3 No Work Prior to Review

- (a) The Design-Builder must not commence or permit the commencement of any Work that is the subject of, governed by, or dependent upon, a Submittal until it has submitted the relevant Submittal to the DDC and:
  - (i) with respect to a Mandatory DDC Approval Submittal, the DDC has provided its approval or consent to the relevant Mandatory DDC Approval Submittal;
  - (ii) with respect to a Deemed Approval Submittal:
    - (A) within seven days of receiving written notice from the Design-Builder that the DDC failed to respond to the Deemed Approval Submittal within the initial period required under this Agreement, the DDC fails to respond to the Submittal;
    - (B) the DDC approves or consents to the Deemed Approval Submittal; or
    - (C) if the DDC comments, objects or rejects the relevant Deemed Approval Submittal in the manner contemplated in this Article, the DDC approves or consents to any re-submission of that Deemed Approval Submittal in accordance with this Article; or
  - (iii) with respect to a Review and Comment Submittal, the earlier of (i) the time in which DDC has commented on such Review and Comment Submittal and (ii) the time period during which the DDC is entitled to raise comments has expired. To the extent that the DDC made comments within such time period and it is subsequently determined that the DDC's comments were justified under Section 13.4(a) (*Grounds for Objection*), the Design-Builder must undo, modify or remove from the Project Site and replace (in a manner complying with this Agreement) the relevant parts of the Work to reflect the DDC's comments.

### 13.4 Review and Comment Submittals

#### (a) Grounds for Objection

For any Review and Comment Submittal, the DDC may comment on such Submittal, but the Design-Builder will only be required to comply with such comments to the extent that:

- (i) the Work that is the subject of the Submittal fails to comply with any applicable covenant, condition, requirement, term or provision of this Agreement, as contemplated in the Submittal;
- (ii) the Work that is the subject of the relevant Submittal is not to a standard equal to or exceeding Best Management Practice, as contemplated in the Submittal; or
- (iii) the Design-Builder has not provided all content or information required with respect to the Submittal, except that the Design-Builder will have an opportunity to re-submit the Submittal with the required content or information.

#### (b) Design-Builder Response

- (i) The Design-Builder must respond to and resolve all of the DDC's comments and objections to a Review and Comment Submittal provided in accordance with the terms of this Agreement and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all comments and objections, in accordance with the review processes described in this Section 13.4. The Design-Builder acknowledges that the DDC may provide comments and objections that reflect concerns regarding interpretation or its preferences or which otherwise do not directly relate to grounds set forth in Section 13.4.
- (ii) If the Design-Builder does not accommodate or otherwise resolve any comment or objection, the Design-Builder must deliver to the DDC within ten days after receipt of the DDC's comments or objections, a written explanation as to why modifications based on the comment or objection are not required or why the relevant comment or objection in relation to the Submittal does not relate (directly or indirectly) to any of the grounds set forth in this Section 13.4 (as applicable). The Design-Builder's explanation must include the facts, analyses and reasons that support its conclusion.
- (iii) If the Design-Builder fails to notify the DDC within the ten-day period, that failure will constitute Design-Builder's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes at Design-Builder's risk.

(c) **Time for Review**

The DDC will review all Submittals in accordance with the time-periods provided in the Schedule of Submittals and Article 8 (*Submittal Procedures*) of the Standard Project Requirements.

13.5 **Limitations on the Design-Builder's Right to Rely**

Nothing in this Article 13 or Article 8 (*Submittal Procedures*) of the Standard Project Requirements (including any act or omission of the DDC under these provisions or any approval of or any comment to any Submittal by the DDC pursuant to this Agreement) will:

- (a) relieve the Design-Builder from the performance of its obligations under this Agreement and complying with the Project Requirements;
- (b) constitute acceptance by the DDC that the Work satisfies the requirements of this Agreement;
- (c) subject or cause the DDC to assume or acquire any liability or claims for any Work performed by the Design-Builder in connection with such Submittal; or
- (d) prevent the DDC from subsequently raising an objection or comment on a Submittal if the same objection or comment was not made by the DDC on a previous Submittal and the objection or comment is necessary to ensure compliance with this Agreement.

14. **TIME FOR COMPLETION & LIQUIDATED DAMAGES**

14.1 **Times for Completion**

The Design-Builder must achieve each of the Completion Milestones set forth below on or before the corresponding “**Guaranteed Completion Date**” in the following table:

<b>Completion Milestone</b>	<b>Guaranteed Completion Date</b>
Substantial Completion	595 days after the NTP 1 Date.
Final Completion	Ninety days following the date of Substantial Completion set forth in the countersigned Certificate of Substantial Completion.

14.2 **Delays**

Upon the earlier of either (i) the Design-Builder or the DDC becoming aware that there will be, or is likely to be, a delay in achieving any Guaranteed Completion Date in accordance with the provisions of Article 6 (*Progress Documentation – CPM*) of the Standard Project Requirements or (ii) the aggregate payments actually paid by the DDC to the Design-Builder are at least 10% less than the aggregate payments that were planned to be paid to the Design-Builder in the Part 2 (*Monthly Payment Schedule*) of Exhibit 5 (*Schedule of Values and Payment Schedule*) (as updated by the DDC for any Delay Events, Allowance Approvals or Change Orders) (each a “**Early Warning Trigger**”), the Design-Builder must:

- (a) promptly (and in any event within fifteen days) after becoming aware of the delay or likely delay, notify the DDC in writing of the delay or likely delay;
- (b) if required by the DDC, prepare a Remedial Plan in accordance with Section 35.3 (*Remedial Plan for Design-Builder Default or Early Warning Trigger*); and
- (c) if requested by the DDC, convene a meeting between the DDC, the Design-Builder, DB Members, relevant Subcontractors and other parties requested by the DDC to discuss the likely delay and the steps that may be taken by the Design-Builder to avoid or mitigate the length of the delay and its consequences.

14.3 **Liquidated Damages for Delays**

(a) **LD Rates**

Subject to Section (b) (*Five Day LD Buffer*), if the Design-Builder fails to achieve Substantial Completion by the Guaranteed Completion Date for Substantial Completion, the Design-Builder must, subject to the LD Cap, pay daily liquidated damages to the DDC (“**Delay Liquidated Damages**”), at the following applicable daily rates for each day of delay following the Guaranteed Completion Date for Substantial Completion:

<b>Applicable Dates following the Guaranteed Completion Date for Substantial Completion</b>	<b>Rates</b>
First 30 days	\$12,670.00

Day 31-40	\$25,680.00
Days 41-50	\$56,989.00
Days 51-60	\$79,993.00
any time on, or after, 61 days.	\$96,966.00

(b) **Five Day LD Buffer**

Notwithstanding Section 14.3(a) above, the DDC will not assess any liquidated damages against the Design-Builder for the first five days following the Guaranteed Completion Date for Substantial Completion. The DDC may commence assessing liquidated damages on the sixth day following the Guaranteed Completion Date for Substantial Completion.

(c) **No Compounding or Duplicative LDs**

The Design-Builder will only pay the highest rate applicable at any time following the Guaranteed Completion Date for Substantial Completion and such liquidated damages rates will not be compounding or duplicative.

**14.4 Accrual and Payment of Delay Liquidated Damages**

Liquidated damages payable under this Article 14 will accrue daily and be payable monthly on the first Business Day of the subsequent month from which they are incurred or, if earlier, the date this Agreement terminates. Such amounts may be set off by the City against unpaid portions of the Contract Price as provided further in Article 24 (*Payment Provisions*).

Subject to the LD Cap, the Design-Builder must continue to pay any Delay Liquidated Damages until the date of Substantial Completion set forth in the countersigned Certificate of Substantial Completion. In no event will the payment of Delay Liquidated Damages excuse the Design-Builder from its obligation to cause the applicable Guaranteed Completion Date to occur or the performance of any of its other obligations under this Agreement.

**14.5 Liquidated Damages not a Penalty**

The Parties, as sophisticated and experienced parties, acknowledge that:

- (a) because of the unique and complicated nature of the Project and its scale, it is difficult or impossible to determine with precision the amount of damages and Losses that would or might be incurred by the DDC as a result of the Design-Builder’s delay in completing the Work on or before the applicable Guaranteed Completion Date;
- (b) the sums that are payable under this Article 14 (including any increase in sums due for extended delays) are in the nature of liquidated damages (and not a penalty), are fair and reasonable and represent a reasonable estimate of fair compensation for the damages and Losses that will be incurred by the City as a result of the Design-Builder’s delay, including additional or increased costs and Losses associated with:
  - (i) administering this Agreement, including PMC costs and the impacts of the delay on the DDC, the City, City Assets, Stakeholders and the general public;

- (ii) where applicable, delays and escalation costs to the City and to any Other Contractors in connection with other BBJ projects;
  - (iii) replacement of the Design-Builder and associated administrative and procurement time and expense;
  - (iv) loss of parking revenue to the City;
  - (v) where applicable to the escalated liquidated damages, continued operational costs for the Rikers Island detention facilities beyond the expected closing date;
  - (vi) loss of leasable revenue for any applicable commercial space;
  - (vii) loss of use, enjoyment and benefit of the Project for the City and the Stakeholders; and
  - (viii) injury to the credibility and reputation of the DDC and Stakeholders among policymakers, relevant industries, in the financial markets, and with the general public, and
- (c) the additional costs and Losses associated with each of the items referred to in clause (b) increase and compound as time passes and also become substantially more complex to ascertain as time passes.

#### 14.6 **Exclusive remedy**

Prior to a termination of this Agreement for a Design-Builder Default, the Delay Liquidated Damages payable under this Article 14 are the DDC's exclusive monetary remedy for the City's Losses with respect to the Design-Builder's delay in achieving the relevant Guaranteed Completion Date, but will not excuse the Design-Builder from liability for any other breach of its obligations under this Agreement and will not preclude the DDC from exercising any other rights it has under this Agreement (including under Article 35 (*Design-Builder Default*)).

#### 14.7 **Limitation on Liability**

##### (a) **LD Cap**

The maximum aggregate liability of the Design-Builder to the City for liquidated damages under this Article 14 is limited to ten percent (10%) of the Contract Price ("**LD Cap**").

##### (b) **Aggregate Limitation on Liability**

Subject to Section 14.7(c) (*Exclusions from Limitations on Liability*), the total, maximum aggregate liability of the Design-Builder to the DDC arising out of this Agreement will be limited to the Contract Price (the "**Aggregate Liability Cap**").

##### (c) **Exclusions for Limitation on Liability**

The limitation of liability in this Section 14.7 will not apply to the following, and none of the following will be taken into account in determining whether the LD Cap or the Aggregate Liability Cap has been reached:

- (i) any liabilities or obligations to the extent that:

- (A) the amount of such liabilities or obligations is paid from the proceeds of insurance maintained by the DDC or required to be maintained by the Design-Builder or any Design-Builder Party under this Agreement;
  - (B) an amount is paid by the Design-Builder but subsequently recovered by the Design-Builder from proceeds of insurance referred to in (A) above, or from the DDC or any third party (other than an entity providing insurance or a Design-Builder Party); or
  - (C) the same would have been recovered by the Design-Builder through such insurance if the Design-Builder or any Design-Builder Party had maintained the coverage required to be maintained by it under this Agreement, or if the Design-Builder or such Design-Builder Party had otherwise complied with its obligations under, and the limitations of, such insurance policies and diligently pursued the relevant insurance claim;
- (ii) liabilities that arise out of the Design-Builder's indemnity obligations under this Agreement or any third-party claims associated with the Work or the performance by the Design-Builder or any Design-Builder Party of any obligations under this Agreement (including any third-party claims for any damage or destruction of property, death or personal injury or third-party Intellectual Property);
  - (iii) liabilities that arise out of the intentional tortious act, gross negligence or fraud of the Design-Builder or any Design-Builder Party; or
  - (iv) any costs, liabilities or obligations that arise from the Design-Builder's abandonment of the Work or from a Design-Builder Default due to an Insolvency Event.

15. **[RESERVED]**

16. **SUBSTANTIAL COMPLETION**

16.1 **Conditions to Substantial Completion**

Subject to the certification to be countersigned by the DDC under Section 18.2(a), Substantial Completion will occur when all the following conditions ("**Substantial Completion Conditions**") have been satisfied:

- (a) all Project specific conditions to Substantial Completion have been achieved as set out in the Project Requirements;
- (b) the Design-Builder has certified, substantially in the form set forth in Part A of Exhibit 13 (*Completion Certificates*), that all Work (other than Punch List items) has been completed in accordance with the requirements of the Contract Documents;
- (c) the Engineer of Record or the Architect of Record has inspected and certified, substantially in the form in Part A of Exhibit 13 (*Completion Certificates*), that all Work (other than Punch List items) has been completed in accordance with the requirements of the Contract Documents and the Project can be safely and fully operated;
- (d) all required certifications for the Final Design Documents and for all mechanical, electrical, electronics, security and other systems have been received;

- (e) all other Submittals required prior to or on the Substantial Completion, as provided in the Schedule of Submittals, have been submitted and, where required, approved by the DDC;
- (f) the Design-Builder has prepared, and received approval from the DDC of, the Punch List;
- (g) all Initial Delay Event Notices for any applicable Delay Events have been submitted to DDC as of, or prior to, the Design-Builder's certification of Substantial Completion;
- (h) the Design-Builder has certified that either all payments required to be made to Subcontractors under each Subcontract have been made or where such payments have not been made due to a dispute under such Subcontract, the Design-Builder has certified that a Payment Bond is in full force and effect in an amount and a form sufficient to satisfy this Agreement and Section 137 of the State Finance Law;
- (i) the Design-Builder certifies that it has delivered all required payment certifications with each Monthly Payment for all Work completed to achieve Substantial Completion;
- (j) all inspection reports have been made in accordance with the requirements of this Agreement;
- (k) all required Governmental Approvals and Utility approvals needed for the Project to achieve beneficial occupancy and satisfy the requirements of this Agreement have been received without condition;
- (l) the Design-Builder has complied with all other requirements of this Agreement that are required for Substantial Completion of the Project, including in Article 15 (*Closeout Procedures*) of the Standard Project Requirements;
- (m) the Design-Builder has completed the necessary instruction to the City's (or its designee's) personnel that will be performing the operations and maintenance work and other necessary personnel and has provided the DDC with copies of training records and course completion certificates issued to each of the relevant personnel as required by this Agreement;
- (n) all Record Drawings as of Substantial Completion, plans, BIM models, procedures, operations and maintenance manuals and all other manuals and reports necessary to perform operations and maintenance of the Project that are required to be prepared by the Design-Builder have been submitted and approved by the DDC, as applicable;
- (o) all demobilization (except due to any Demolition Work, as applicable) from relevant parts of the Project Site has been completed, including the removal of temporary work and equipment used in performance of the Work.

## 16.2 Substantial Completion Process

- (a) The Design-Builder must provide written notice to the DDC of the anticipated date for satisfying all the Substantial Completion Conditions no later than ninety days prior to the anticipated date. The notice must include a list of all Substantial Completion Conditions that will be satisfied to allow the DDC to countersign the Certificate of Substantial Completion.
- (b) No later than sixty days prior to satisfying all of the Substantial Completion Conditions, the Design-Builder must meet and confer with the DDC to confirm that the list of requirements provided under Section 16.2(a) is in accordance with this Agreement. Following the initial meeting, the Design-Builder and the DDC will meet, confer and exchange information on

a regular basis to allow the DDC to orderly and timely inspect and test the Project, review the Final Design Documents and final Construction Documents for the Project, and determine whether the Design-Builder has satisfied all of the Substantial Completion Conditions.

- (c) The Design-Builder must provide written notice to the DDC promptly after it has satisfied all the Substantial Completion Conditions, together with all supporting documents and a Certificate of Substantial Completion signed by the Design-Builder.
- (d) No later than thirty days after receiving the Design-Builder's notice under Section 16.2(c), the Parties will commence the Completion Protocols until the DDC countersigns the Certificate of Substantial Completion provided by the Design-Builder under Section 16.2(c), as set forth in Section 18.2(a).
- (e) In connection with the DDC's issuance of the Certificate of Substantial Completion, the DDC may add or remove items to or from the Punch List.

### 16.3 **Effect of Certificates of Substantial Completion**

Issuance of any Certificate of Substantial Completion will not:

- (a) relieve the Design-Builder of its obligation to complete the remaining Work;
- (b) cause the DDC to incur Losses or claims for the Design-Builder's performance of the Work;
- (c) be construed to constitute an extension of the Design-Builder's time to complete the remaining Work;
- (d) release the Design-Builder from any obligations under this Agreement, including its obligations with respect to insurance coverage.

## 17. **FINAL COMPLETION**

### 17.1 **Conditions to Final Completion**

Subject to the certification to be countersigned by the DDC under Section 18.2(a), Final Completion will occur when all the following conditions ("**Final Completion Conditions**") have been satisfied:

- (a) Substantial Completion has been achieved for the Project;
- (b) all Project specific conditions to Final Completion have been achieved as set out in the Project Requirements;
- (c) the Design-Builder has certified, substantially in the form in Part B of Exhibit 13 (*Completion Certificates*), that all the Work has been completed in accordance with the requirements of the Contract Documents;
- (d) the Engineer of Record or the Architect of Record, as applicable, has inspected and certified, substantially in the form in Part B of Exhibit 13 (*Completion Certificates*), that all the Work has been completed in accordance with the requirements of the Contract Documents;
- (e) the Design-Builder certifies that the project has been designed, constructed and configured to meet the LL31-2016 Low Energy Intensity Building requirements;

- (f) the Project has been completed in a manner that is LEED Gold Certification equivalent, as determined by the DDC in its discretion;
- (g) the Design-Builder certifies that it has delivered the final payment certifications required with the final payment for all Work described in Section 24.9(f) (*Final Payment*);
- (h) the Design-Builder has acquired, properly stored and turned over to the City spare parts, consumables, resources and equipment necessary for the City (or its designee) to maintain the Project, as required by this Agreement;
- (i) all remaining Submittals that the Design-Builder is required by the Schedule of Submittals to submit after Substantial Completion but before Final Completion have been submitted and approved by the DDC;
- (j) the DDC has received a complete and final set of the following documents:
  - (i) the Record Drawings; and
  - (ii) all other records or documents required under this Agreement to achieve Final Completion; and
- (k) the Design-Builder has issued or caused to be issued any certificates required by any Governmental Entity with jurisdiction with respect to the design, engineering or construction of the Work, including any certifications from the Engineer of Record or Architect of Record, and certificates of occupancy.

## 17.2 Final Completion Process

- (a) The Design-Builder must provide written notice to the DDC of the anticipated date for Final Completion no later than twenty days prior to the anticipated date for satisfying all the Final Completion Conditions. The notice must include a list of all Final Completion Conditions that will be satisfied to allow the DDC to countersign the Certificate of Final Completion.
- (b) No later than ten days prior to satisfying all Final Completion Conditions, the Design-Builder must meet and confer with the DDC to confirm that the list of requirements provided under Section 17.2(a) is in accordance with this Agreement and provide a Certificate of Final Completion signed by the Design-Builder. Following the initial meeting, the Design-Builder and the DDC will follow the Completion Protocols until the DDC countersigns the Certificate of Final Completion, as set forth in Section 18.2(a).

## 18. COMPLETION PROTOCOLS

### 18.1 Inspection and Review

As soon as practicable after receiving any Design-Builder notice under any of the following, as applicable: 16.2(c) (*Substantial Completion Process*) or 17.2(a) (*Final Completion Process*) (each a "**Completion Notice**"), the DDC must inspect the applicable portion of the Project seeking Substantial Completion or Final Completion, as applicable, review the applicable Final Design Documents, final Construction Documents, Record Drawings and other Submittals and conduct any other investigation as may be necessary to determine whether, as applicable, either (i) the Substantial Completion Conditions have been satisfied, or (ii) the Final Completion Conditions have been satisfied (collectively, the "**Completion Conditions**").

### 18.2 Certification

Following each inspection referred to in Section 18.1 (*Inspection and Review*):

- (a) if the DDC determines that all of the applicable Completion Conditions have been satisfied, the DDC will countersign, as applicable, the Certificate of Substantial Completion delivered to the DDC by the Design-Builder under Section 16.2(c), or the Certificate of Final Completion delivered to the DDC by the Design-Builder under Section 17.2(b); or
- (b) if the DDC determines that any applicable Completion Condition has not been satisfied, the DDC will notify the Design-Builder in writing of the applicable Completion Conditions that have not been satisfied.

### 18.3 Disputes

- (a) The Design-Builder must notify the DDC if it disputes the DDC's determination under Section 18.2(b) within five days of receiving the DDC's determination. If the Design-Builder does not notify the DDC of a dispute within that five-day period, the Design-Builder will be deemed to have accepted the DDC's determination.
- (b) If the Design-Builder accepts or is deemed to have accepted the DDC's determination under Section 18.2(b), the Design-Builder may resubmit (over one or more iterations) a Completion Notice once all the applicable Completion Conditions have been satisfied (and Section 18.1 (*Inspection and Review*) will apply to that resubmission).
- (c) If the Design-Builder issues a notice under Section 18.3 and the Parties fail to resolve the dispute within a further fourteen days of that notice, the matter will be resolved in accordance with Article 41 (*Dispute Resolution Procedure*).

## PART C – CONTRACTING PRACTICES AND PERSONNEL

### 19. PERSONNEL

- (a) The Design-Builder must retain, employ and utilize (or where applicable, must ensure that the relevant Key Subcontractor retains, employs and utilizes) the individuals specifically listed as Key Personnel in Exhibit 9 (*Key Personnel / Key Subcontractors*) (or any replacements approved in accordance with Exhibit 9 (*Key Personnel / Key Subcontractors*)) to fill the corresponding positions until all responsibilities of that position have been completed.
- (b) The Design-Builder will not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which they will be employed. Whenever the DDC will inform the Design-Builder, in writing, that any individual is, in DDC's opinion, incompetent, unfaithful, or unskilled, such individual will no longer perform work under this Agreement. Prior to making a determination to direct the Design-Builder that an individual will no longer perform work under this Agreement, the DDC will provide the Design-Builder an opportunity to be heard on no less than five days' written notice. The DDC may direct the Design-Builder to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the DDC's determination.

### 20. SUBCONTRACTING

#### 20.1 Subcontracting

- (a) For each proposed Subcontractor at any-tier, the Design-Builder must:

- (i) submit information required to register such Subcontractor in the Payee Information Portal, including the name and address of the proposed Subcontractor; the portion of the Work and materials which it is to perform and furnish; the maximum Subcontract value and the start and end date of the Subcontract; and
- (ii) where the applicable Subcontract (or all Subcontracts with the same Subcontractor for the Project in the aggregate) has a value of more than \$100,000 or if otherwise required by the DDC, the Design-Builder must:
  - (A) obtain DDC's prior approval of such Subcontractor prior to such Subcontractor commencing any Work under this Agreement; and
  - (B) where the Subcontract (or all Subcontracts with the same Subcontractor for the Project in the aggregate) has a value of more than \$250,000 in addition to the information in (i) above, must digitally submit through the Procurement and Sourcing Solutions Portal ("**PASSPort**") disclosure filings and any other information required by DDC necessary to demonstrate that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience, and financial resources to perform the Subcontracted Work in accordance with the terms and conditions of this Agreement and the applicable Subcontract;
- (b) All Subcontractors providing services covered by this Agreement pursuant to a Subcontract with a value of \$100,000 or less are approved.
- (c) For proposed Subcontracts with a value of \$250,000 or less, DDC's approval will be deemed granted if DDC fails to issue a written approval or determination of ineligibility within 45 days of DDC's receipt of a complete written application for approval.
- (d) The Design-Builder may not commence any applicable Work with any Subcontractor unless the Design-Builder has complied with the obligations under this Section 20.1. The Design-Builder must provide a copy of any draft or executed Subcontract at any-tier upon request by the DDC.
- (e) Any Subcontractor may be deemed as ineligible by DDC (in its sole discretion), in which case the Design-Builder must perform the Work itself or through other approved or permitted Subcontractors.
- (f) DDC may revoke the approval of any Subcontractor granted or deemed granted pursuant to this Agreement at any time if revocation is deemed to be in the interest of the City. DDC will provide notice of such revocation in writing on no less than 10 days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Design-Builder will cause the Subcontractor to cease all work under the Agreement. The City will not incur any further obligation for services performed by such Subcontractor pursuant to this Agreement beyond the effective date of the revocation.
- (g) The Design-Builder must retain or cause to be retained only Subcontractors that are qualified, experienced and capable of performing the portion of Work to be performed by that Subcontractor at least in accordance with Best Management Practice.
- (h) The Design-Builder will be fully responsible under this Agreement for the acts and omissions of all Subcontractors performing any work or services in relation to the Work, as if they were the acts and omissions of the Design-Builder.

- (i) The DDC's approval of a Subcontractor will not relieve the Design-Builder of any of its responsibilities, duties, and liabilities under this Agreement. The Design-Builder will be solely responsible to the City for the acts or defaults of its Subcontractor and of such Subcontractor's officers, agents, and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Design-Builder to the extent of its Subcontract.
- (j) Nothing in this Agreement will create any contractual relationship between the City and any Subcontractor (or any of its employees).
- (k) No Subcontract entered into by any Design-Builder Party will impose any obligation or liability upon the City to any Subcontractor (or any of its employees).
- (l) The City will not be responsible to the Design-Builder for any Losses it incurs that are caused, in whole or in part, by any Subcontractor (or any of its employees).

## 20.2 Key Subcontracts

The Design-Builder must not, without the prior written consent of the DDC:

- (a) terminate or agree to terminate all or any part of a Key Subcontract, except in accordance with its terms;
- (b) enter into (or permit the entry into by any other person of) any agreement replacing a Key Subcontract;
- (c) amend or vary any Key Subcontract in any material respect, other than to the extent required to comply with any amendment of this Agreement or pursuant to Change Orders implemented in accordance with this Agreement; or
- (d) permit the assignment by the Key Subcontractor of any of its rights and obligations under the Key Subcontract.

## 20.3 Required Subcontract Provisions

The Design-Builder must ensure that every Subcontract is in writing and includes:

- (a) a requirement that the Subcontractor carry out the Work in accordance with the applicable Standards of Performance and the terms, conditions and standards set forth in this Agreement to the extent applicable to the Subcontractor;
- (b) a covenant to maintain all Governmental Approvals for the performance of the applicable Work (other than City Governmental Approvals) and comply with all Governmental Approvals applicable to the Project Site or the Work;
- (c) customary representations, warranties, guaranties, performance security (if applicable) and liability provisions of the Subcontractor in accordance with Best Management Practice for work of similar scope and scale;
- (d) a requirement that the Subcontractor obtain and maintain in force any insurance coverages as are described in this Agreement and which are applicable to the Key Subcontractor (or if such requirement is not specified in this Agreement, then in accordance with Best Management Practice for work of similar scope and scale) and to comply with all applicable insurance requirements under Exhibit 6 (*Insurance Coverage Requirements*);

- (e) a requirement that any Key Subcontractor participate in meetings between the Design-Builder and the DDC (if participation is required by this Agreement or as otherwise requested or approved by the DDC) concerning matters pertaining to the Key Subcontractor, their Work or the coordination of their Work with other contractors working at the Project Site, including any meetings required under Article 2 (*Project Management and Coordination*) of the Standard Project Requirements. All direction to the Key Subcontractor must be provided by the Design-Builder but nothing in this Agreement will limit the authority of the DDC to give any direction or take any action as it believes is necessary to remove an immediate and present threat to the safety of life or property;
- (f) a requirement that the Subcontractor participate in any dispute resolution proceeding pursuant to this Agreement if either the DDC or the Design-Builder request the Subcontractor's participation;
- (g) without cost to the DDC, a provision that expressly permits assignment to the DDC, or its successor, assignee or designee, of all Design-Builder's rights under the Key Subcontract contingent only upon delivery of a written request from the DDC following termination or expiration of this Agreement, allowing the DDC or its successor, assignee or designee to assume the benefit of the Design-Builder's rights with liability only for those remaining obligations of the Design-Builder accruing after the date of assumption, the assignment to include the benefit of all Key Subcontractor warranties, indemnities, guarantees and performance security (if any), and expressly stating that any acceptance of assignment of any Key Subcontract, by the DDC, or its successor, assignee or designee, will not operate to make the DDC, or its successor, assignee or designee, responsible or liable for any breach of any Key Subcontract, by the Design-Builder or for any amounts due and owing under any Key Subcontract, for work or services rendered prior to the effective date of the assignment to, and assumption of, the Key Subcontract by the DDC, it being understood that no such assignment or assumption will release or discharge the Design-Builder of liabilities or obligations (including, without limitation, amounts due and owing under any Key Subcontract) accrued by the Design-Builder;
- (h) a covenant, expressly stated to survive termination of the Key Subcontract, to promptly execute and deliver to the DDC or its successor, assignee or designee a new contract between the Key Subcontractor and the DDC or its successor, assignee or designee on the same terms and conditions as the Key Subcontract, if (A) the Key Subcontract, is rejected in bankruptcy or is wrongfully terminated by the Design-Builder and (B) the DDC delivers to the Key Subcontractor written request for the new contract within 60 days following termination or expiration of this Agreement;
- (i) a requirement that the Key Subcontractor will comply with the applicable provisions of Article 42 (*Records and Audit*);
- (j) a requirement that the Key Subcontractor will indemnify and hold harmless the Indemnified Parties as indemnitees with an equivalent indemnity as required of the Design-Builder under this Agreement, with direct rights of enforcement, in any defense,
- (k) a requirement for an acknowledgement, with each payment received, in the form attached as Part 2 (*Payment Certification*) of Exhibit 5 (*Schedule of Values and Monthly Payment Schedule*);
- (l) (A) the right of the Design-Builder to terminate the Subcontract upon any termination of this Agreement or (B) an acknowledgement that the Subcontract automatically terminates upon any termination of this Agreement, in each case without liability of the DDC for the Key Subcontractor's lost profits or business opportunity, but subject to the right of the DDC to request a new contract as provided above;

- (m) a requirement that nothing contained in the Subcontract will impair the rights of the DDC;
- (n) a requirement that nothing contained in the Subcontract or this Agreement will create any contractual relationship between the Subcontractor and the DDC;
- (o) (A) a requirement that the Subcontractor comply, and cause its Subcontractors to comply, with the Project Labor Agreement and (B) compliance, monitoring and enforcement provisions consistent with the Project Labor Agreement;
- (p) provisions naming the DDC as a third-party beneficiary of (A) all Key Subcontractor representations and warranties contained in the applicable Key Subcontract and (B) each of the provisions identified in clauses (a) through (o) above incorporated in the Key Subcontract;
- (q) a requirement that the prevailing wage rates and supplemental benefits must be paid in accordance with Labor Law Section 220;
- (r) every Subcontract (or all Subcontracts with the same Subcontractor for the Project in the aggregate) in excess of fifty thousand dollars must provide that pursuant to the requirements of Section 6-123 of the City Administrative Code the Subcontractor must not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 et seq); and
- (s) language that expressly provides that any purported amendment with respect to any of the foregoing matters set forth in clauses (a) through (r) above without the prior written consent of the DDC will be void ab initio and of no force and effect.

#### 20.4 **No Liability**

Notwithstanding the incorporation in any Subcontract any of the above, and notwithstanding any rights the City may have reserved to itself, the City will have no liabilities or obligations of any kind to any Subcontractor engaged by the Design-Builder or for any other matter in connection with the relevant Subcontract, and the Design-Builder releases and discharges the City of and from any and all such liability and obligations (excepting only those risks, responsibilities, costs and expenses arising from the gross negligence or intentional tortious act of the City or any of its officials, employees and agents).

#### 21. **NEW YORK CITY LEGAL AND PUBLIC POLICY REQUIREMENTS**

##### (a) **DDC Legal and Policy Requirements**

The Design-Builder must perform, and must ensure that its Subcontractors perform, the Work in compliance with the requirements set forth in Exhibit 16 (*Standard Legal and Public Policy Requirements*).

##### (b) **M/WBE Requirements**

The Design-Builder must (i) meet the M/WBE Goals defined in Exhibit 14 (*M/WBE Requirements*) and (ii) comply with all other requirements in Exhibit 14 (*M/WBE Requirements*) to ensure a successful M/WBE hiring program in its delivery and performance of the Work.

##### (c) **Project Labor Agreement**

As required by the Rikers Island Jail Complex Replacement Act, the Project and all applicable Work performed under this Agreement will be subject to the Project Labor Agreement attached to this Agreement as Exhibit 18 (*Project Labor Agreement*).

(d) **Continuation of Work**

Whenever any labor strike, slowdown, work stoppage, picketing or other labor action that might interfere with the performance of this Agreement, or with other City contracts or the operation of any City facility at the Project Site or at any other City Asset as a result of the Design-Builder's (or its Subcontractor's) performance under this Agreement, the Design-Builder must pursue all remedies that are appropriate and available to avoid any interference to the Project, the DDC or the efficient operations of any City Asset, all in accordance with, and subject to, the Project Labor Agreement.

**PART D – CONTRACT PRICE, INCENTIVES AND PAYMENTS**

22. **CONTRACT PRICE**

22.1 **Contract Price**

As consideration to the Design-Builder for the full and complete performance of the Work, the DDC will pay, and the Design-Builder will accept, the "**Contract Price**" which consists of:

- (a) a firm, fixed-price, lump sum equal to **\$73,982,327** (the "**Lump Sum Amount**") to be paid on a monthly basis based on a percentage of the Work completed in accordance with Article 24 (*Payment Provisions*); and
- (b) all Allowances, subject to, and in accordance with Section 22.5 (*Allowance Payment Request*).

22.2 **Total Compensation**

The Contract Price is the total compensation for all the Design-Builder's costs and risks for performing the Work, including all costs for:

- (a) all Allowance Work, subject to, and in accordance with Section 22.4 (*Allowances*) and Section 22.5 (*Allowance Payment Request*);
- (b) Subcontractors, equipment, materials, labor, transportation and services;
- (c) any royalties or licensing or other fees with respect to any Intellectual Property rights;
- (d) obtaining, maintaining and complying with Governmental Approvals;
- (e) taxes and any increase in taxes, including corporate taxes, sales taxes, use taxes, taxes on all equipment, materials, labor and services;
- (f) any duties, fees and royalties imposed with respect to any equipment, materials, labor or services;
- (g) subject to payment for any Approved Materials, completion of the Work as required in this Agreement; and
- (h) all the Design-Builder's performance of any Work during the Warranty Period or to correct any latent defects or non-conforming Work.

### 22.3 No Adjustments to the Contract Price

Except for any adjustment to the Contract Price in accordance with Articles 26 (*Allowance Approvals, Change Orders and DDC Directives*) and 27 (*Delay Events*):

- (a) the Contract Price will not be adjusted; and
- (b) as a result, the Design-Builder is solely responsible for any costs it incurs in excess of the Contract Price.

### 22.4 Allowances

The Contract Price includes six million one hundred sixty thousand one hundred dollars (\$6,160,100) for Allowances, for which the Design-Builder may request an Allowance Payment Request in accordance with, and subject to, the following allocations in this Section 22.4 and the protocols and procedures in Section 22.5 (*Allowance Payment Request*):

- (a) **“Compensable Delay Event Allowance”** of four million nine hundred eighty thousand dollars (\$4,980,000) in the aggregate, which may be disbursed by the DDC to the Design-Builder for the following:
  - (i) the Net Cost of any Compensable Delay Event approved under an Allowance Approval determined in accordance with Article 26 (*Allowance Approvals, Change Orders, and DDC Directives*); and
  - (ii) to reimburse the Design-Builder for DDC’s share of the fees and expenses required to be paid to the Disputes Review Board for performing its services under and in accordance with this Agreement, as may be requested in accordance with 22.5(b)(ii)(B) (*Other Allowance Disbursements*);
- (b) **“Unit Price Work and Escalation Costs Allowance”** of seven hundred fifty thousand dollars (\$750,000) in the aggregate, for any of the following:
  - (i) **General Excavation Unit Price** - to the extent the Design-Builder performs more than 25,000 cubic yards of excavation Work (excluding Boulder Rock removal), the Design-Builder may submit an Allowance Payment Request all in accordance with Section 22.5 (*Allowance Payment Request*) at a cost equal to \$36.00, per cubic yard of such excavation Work;<sup>3</sup> or
  - (ii) **Boulder Rock Excavation Unit Price** - to the extent the Design-Builder performs Boulder Rock excavation Work (excluding any excavation Work under Section 22.4(b)(i) above), the Design-Builder may submit an Allowance Payment Request all in accordance with Section 22.5 (*Allowance Payment Request*) at a cost equal to \$107.00, per cubic yard of Boulder Rock excavation Work;
  - (iii) **Dewatering** - to the extent the Design-Builder performs more than 8 days of dewatering as may be reasonably necessary to perform the Work, the Design-Builder may submit an Allowance Payment Request for any such additional dewatering, at a cost equal to \$5,671.00 per day of additional dewatering reasonably necessary to perform the Work,<sup>4</sup> in accordance with Section 22.5 (*Allowance Payment Request*);

<sup>3</sup> Does not include support of excavation, backfill and disposal. Includes Boulder Rock under 1 cubic yard.

<sup>4</sup> The unit rate is based on a ‘casual’ dewatering system only that is typical of rainwater dewatering. A ground water dewatering system is not included in the Unit Price for dewatering or Lump Sum Amount.

(iv) **Escalation** for any Escalation Items based on the following formula applied at the beginning of each Escalation Year:

- (A) the first “**Escalation Year**” will begin one year from the NTP 1 Date and will conclude at the end of the twelve-month period after such date. Each twelve-month period thereafter until Substantial Completion will be a successive Escalation Year.
- (B) On the first day of each Escalation Year, the Current Escalation Index (“**CEI**”) equal to the portion of the Building Cost Index which only covers structural steel, cement and lumber (and excludes labor) for New York, NY most recently published by Engineering News Record (“**ENR Building Index**”) on that date will be compared to the CEI based on the ENR Building Index for New York, NY published one year prior. The percentage change, either positive or negative for that one-year period will be calculated to two decimal places. This percentage value is the Project Escalation Index (“**Project EI**”) for the following Escalation Year. This calculation is represented in the following formula:

**Project EI** = the current year CEI – the previous year CEI.

- (C) Subject to complying with Section 22.5 (*Allowance Payment Request*), if the percentage change in the calculated Project EI is equal to, or above, ten percent (10%), the Design-Builder will be entitled to claim a Allowance Payment Request, equal to the Project EI in excess of ten percent (10%) multiplied by the Escalation Items included in any such Payment Request;
  - (D) If the percentage change in the Project EI decreases by ten percent (10%) or more for any Escalation Year, the DDC will be entitled to reduce each Payment Request made during the applicable Escalation Year (proportionally), by an amount equal to such negative Project EI percentage in excess of ten percent (10%) multiple against the Escalation Items included in each Payment Request during the prior Escalation Year.
  - (E) The Retainage Amounts withheld from each Payment Request will be established based on the escalated Payment Request amount.
- (c) “**Award Fee Program and Early Completion Allowance**” of three hundred-eighty thousand, one hundred dollars (\$380,100) in the aggregate, to be disbursed in accordance with:
- (i) for the Award Fee Program, Section 23.2 (*Award Fees*); and
  - (ii) for the Early Completion Bonus, Section 23 (*Early Completion Bonus*); and
- (d) “**FF&E Allowance**” of fifty thousand dollars \$(50,000) to be disbursed, subject to compliance with Section 7.9 (*Furniture, Fixtures and Equipment*).

The Design-Builder’s entitlement to seek any Allowance will be subject to complying with the requirements in Section 22.5 (*Allowance Payment Request*).

## 22.5 Allowance Payment Request

(a) **Generally.**

- (i) **Allowance Withdrawal Request.** Subject to Section 22.5(d) regarding Compensable Delay Events, at any time during the performance of the Work, the Design-Builder may request approval to receive payment from any Allowance, up to the full Allowance, by submitting a detailed itemized request setting-out the proposed purpose for such request, all in compliance with Section 22.5(b) (*Allowance Payment Request Details*) (a “**Allowance Payment Request**”).
  - (ii) **Estimate.** Where certain Work or amounts subject to an Allowance Payment Request include only an estimate and not the actual value of Work performed or amounts to be incurred, the Design-Builder may commence such Work or incur such costs following submission of such estimate to the DDC.
  - (iii) **Eligible Costs.** The Allowance will be used to compensate the Design-Builder on either a fixed-price basis or a unit price basis, as may be expressly provided in this Agreement or agreed between the Parties under an Allowance Approval. Each Allowance includes the labor, materials, equipment, transportation, taxes, Design-Builder mark-up and other soft-costs, and additional insurance (where applicable) associated with the applicable Allowance Work, all as calculated in accordance with Section 22.4. All other costs are deemed to be included in the original Lump Sum Amount, and are not subject to adjustment, regardless of the actual amount of the Allowance Work. Any amount which the Design-Builder included as part of its contingency in the Lump Sum Amount for any Allowance Work will be netted from any Allowance Payment Request.
- (b) **Allowance Payment Request Details.**
- (i) **Generally.** Each Allowance Payment Request must include, to the extent applicable, the following information:
    - (A) identification of the proposed scope of Allowance Work to be performed, the applicable outstanding Allowance, and the reason for the request. The Allowance Work, including all activities and implications associated with the proposed Allowance Work, must be described in sufficient detail and broken down into suitable components and activities to enable the DDC to evaluate the reasonableness of the proposed Allowance Payment Request;
    - (B) the Design-Builder’s proposed Net Costs it would incur as a result of the proposed Allowance Work. In the case of any categories of costs that are subject to Exhibit 3 (*Extra Work and Allowance Work Costs*), such costs must be determined in accordance with Exhibit 3 (*Extra Work and Allowance Work Costs*). In the case of any Unit Price Work, such costs must be determined in accordance with Section 22.4(b) (*Unit Price Work Allowance and Escalation Costs*);
    - (C) any date or dates by which a decision by the DDC is critical;
    - (D) any consents or permits that will be required as a result of the proposed Allowance Work; and
    - (E) any other supporting documentation as may be reasonably requested by the DDC.
  - (ii) **Other Allowance Disbursements.** For Allowance Payment Requests in connection with the Escalation Items, Disputes Review Board fees, the Award Fee

Program and the Early Completion Bonus, the FF&E Allowance, the Design-Builder's Allowance Payment Request must:

- (A) identify the applicable Allowance that the Design-Builder is requesting a payment under and explain in sufficient detail, the basis for the Design-Builder's request for such withdrawal;
- (B) for any Disputes Review Board fees, costs or expenses, include invoices from the Disputes Review Board (Disputes Review Board invoices are sufficient evidence for DDC's approval);
- (C) for any Award Fee Program payments, such amounts must be expressly authorized in writing by the DDC in accordance Exhibit 4 (*Award Fees*);
- (D) for the Early Completion Bonus, the Design-Builder must include the DDC certificate of completion illustrating the Design-Builder's entitlement to such amount under Section 23.1 (*Early Completion Bonus*);
- (E) for the FF&E Allowance, the Design-Builder must include a record of receipts for any FF&E purchased in accordance with the requirements in Section 7.9 (*Furniture, Fixtures and Equipment*); and
- (F) in each case, any other supporting documentation as may be reasonably requested by the DDC.

(c) **DDC Approval.**

- (i) Subject to the limitations under this Agreement and the requirement that Compensable Delay Events must first be approved by the DDC in accordance with Section 22.5(d), the Design-Builder may incur, at its own risk, costs and expenses regarding any Allowance without first obtaining the DDC's prior written approval of the applicable Allowance Payment Request.
- (ii) The Design-Builder may submit an Allowance Payment Request to DDC at any time for its review prior to submitting it as part of any Payment Request. Upon submission of such Allowance Payment Request, the DDC will respond to such Allowance Payment Request within a period not to exceed fifteen days after the date of the DDC's receipt of such request. Any preliminary DDC approval will be subject to final approval once such Allowance Work is performed and a final Allowance Payment Request is submitted with the Design-Builder's regular monthly Payment Request.
- (iii) Upon completion of all or a designated portion of Allowance Work, the Design-Builder may request an Allowance Payment Request for such Allowance Work, or designated portion thereof, as part of any Payment Request, and the DDC will approve any such Allowance Payment Request as part of the monthly Payment Request process in Article 24 (*Payment Request*). DDC's approval will be issued in the form of an Allowance Approval.

(d) **Allowance Payment Requests for Compensable Delay Events.**

To the extent an Allowance Payment Request is in connection with a Compensable Delay Event, the Design-Builder must comply with the process for obtaining the DDC's approval of a Compensable Delay Event in accordance with Article 27 (*Delay Events*), and will obtain

an Allowance Approval in accordance with the process in Article 27 (*Delay Events*) and Article 26 (*Allowance Approvals*).

## 22.6 Allowance Contract Price Adjustment

- (a) **Reduction in Contract Price** - Whenever the Design-Builder's actual cost for Allowance Work is less than the applicable stated Allowance the DDC will retain such remaining amount without payment to the Design-Builder, and the Contract Price will be adjusted on, or prior to, Final Completion for such remaining amount. Such reduction will be reflected in a Change Order.
- (b) **Increase in Contract Price.** Whenever the actual total costs for Allowance Work is more than the applicable stated Allowance, taking into account all the amounts expended for such Allowance Work to date, where such excess in costs is not caused by any Design-Builder Party's breach of this Agreement or any Standards of Performance, the Parties must agree to a Contract Price adjustment with respect to such Allowance pursuant to a Change Order. The amount of the Change Order should reflect the difference between the actual Allowance Work costs to be incurred by the Design-Builder for the particular Allowance Work and the Allowance.

## 23. INCENTIVE PAYMENTS

### 23.1 Early Completion Bonus

- (a) If the DDC issues a Certificate of Substantial Completion, evidencing that Substantial Completion has been achieved by the Design-Builder thirty days or more before the Guaranteed Substantial Completion Date (the "**Scheduled Early Completion Date**"), the DDC will, subject to Section 23.1(c), pay the Design-Builder an "**Early Completion Bonus**" equal to \$12,670 for each day of early completion, up to a maximum of thirty days and \$380,100. The Early Completion Bonus will not exceed the sum of \$380,100.
- (b) If the Design-Builder is entitled to receive an Early Completion Bonus in accordance with Section 23.1(a), the DDC will pay that Early Completion Bonus with the final payment that is paid in accordance with Section 24.9(f) (*Final Payment*).
- (c) The Design-Builder will have no entitlement to receive an Early Completion Bonus and irrevocably waives any claim to receive an Early Completion Bonus or to otherwise recover the value of any Early Completion Bonus as part of any Claim under this Agreement if there is any concurrent Design-Builder Default or this Agreement is terminated for a Design-Builder Default prior to Final Completion.

### 23.2 Award Fee Program

To the extent applicable, any "**Award Fees**" eligible to be earned under this Agreement will be established pursuant to an Award Fee plan described further in Exhibit 4 (*Award Fees*).

## 24. PAYMENT PROVISIONS

### 24.1 Monthly Payments

#### (a) Monthly Payments

The DDC will pay the Contract Price by making monthly payments to the Design-Builder of the undisputed amounts owed to the Design-Builder under this Agreement ("**Monthly Payments**"). The Design-Builder must submit an accurate and complete Payment Request

in writing to the DDC that satisfies the requirements in Section 24.2 (*Payment Request*), by the tenth day of each month, in an amount corresponding to:

- (i) Monthly Payments for Work performed by the Design-Builder during the immediately preceding month; plus
- (ii) any Allowance Approvals; plus
- (iii) any other amounts owed by the DDC under this Agreement, less
- (iv) any undisputed amounts owed by the Design-Builder under this Agreement to the DDC.

(b) **Percentage of Work Performed**

Subject to the Design-Builder satisfying the requirements in this Agreement, the DDC will pay Monthly Payments to the Design-Builder based on (i) the Design-Builder's percentage completion of each item listed in the Schedule of Values as evidenced by each Payment Request and (ii) any other amount expressly approved by the DDC in writing, in each case, which is due and payable to the Design-Builder.

(c) **Mobilization Payment**

Notwithstanding Section 24.1(b), on or after the NTP 1 Date, the Design-Builder may submit a Payment Request for the line item in the Schedule of Values identified as the "**Mobilization Payment**", except that such Payment Request will be subject to registration of the Agreement pursuant to section 328 of the City Charter. The Design-Builder's Payment Request for the Mobilization Payment must include the same or an equivalent level of detail requested for these amounts under the ITP. Subject to registration of the Agreement as set forth above, the DDC will review and pay the Mobilization Payment (without taking any Retainage Amount) no later than fifteen Business Days after receipt of a Payment Request deemed complete by the DDC.

(d) **Stored Materials**

Except as permitted in accordance with Section 24.3 (*Payment for Stored Materials*), the Design-Builder must not include in any Payment Request any costs for material secured and stockpiled for future use on the Project. Only materials that have been incorporated in the Work may be included in a Payment Request.

## 24.2 **Payment Request**

The Design-Builder's Payment Request must include:

- (a) information regarding the Work completed in the immediately preceding month as well as specifying the percentages of the various divisions of Work included in the Schedule of Values actually completed at the time of certification;
- (b) a certification that the Design-Builder has performed the applicable elements of the Work required to receive the Monthly Payment in accordance with the terms of this Agreement;
- (c) reasonable documentary evidence of the performance of the applicable elements of the Work, sufficient for the DDC to reasonably determine that the Design-Builder's performance has occurred, and payment is due;

- (d) all executed Allowance Approvals or Allowance Payment Requests, as applicable and an accounting of the cumulative amounts of any Allowances expended to date;
- (e) all executed Change Orders relevant to the applicable Payment Request;
- (f) a certificate from the Design-Builder in the form attached in Part 2 of Exhibit 5 (*Schedule of Values and Payment Schedule*);
- (g) the Monthly Progress Report for the immediately preceding month;
- (h) a verified statement in the form prescribed by the City Comptroller setting forth the information required under Labor Law Section 220-a;
- (i) a statement of any back charges and credits that the DDC is entitled;
- (j) statement of payments to Subcontractors;
- (k) certified payroll forms for the immediately preceding month; and
- (l) any other certifications or additional or supporting information as may be reasonably requested by the DDC.

#### 24.3 **Payments for Stored Materials**

- (a) The Design-Builder may, as approved by the DDC, include as part of any Payment Request, the cost for any Approved Materials stored off the Project Site and pending incorporation in the Work, only if the Design-Builder satisfies the requirements in this Section 24.3 (*Payments for Stored Materials*).
- (b) The Design-Builder's right to seek payment for Approved Materials stored off the Project Site is subject to all of the following conditions being satisfied:
  - (i) the Approved Materials must have a minimum cost of \$250,000 and be in a condition ready for installation into the Project without further fabrication or processing, and must be materials that will be stored for a minimum of sixty days;
  - (ii) the Approved Materials must be stored in a bonded warehouse located in the continental United States (a "**Warehouse**") and that is approved in writing by the DDC. The Warehouse must be capable of storing any Approved Materials in accordance with standard industry practice for the type, quantity and size of Approved Materials being stored;
  - (iii) the Approved Materials must be stored in a manner consistent with the Approved Materials' manufacturers' recommendations in order to ensure that the Approved Materials are sufficiently protected, and all manufacturers' warranties remain unimpaired;
  - (iv) the Approved Materials must be individually marked and identified in a conspicuous manner and in accordance with standard industry practice, as "Property of the City of New York – Contract [\_\_\_\_\_]";
  - (v) the Approved Materials must be available for the DDC to inspect at the Warehouse, at any time, as reasonably requested by the DDC;

- (vi) the Design-Builder must submit to the DDC, as part of the relevant Payment Request, certified and itemized Warehouse receipts for the Approved Materials stored. Such receipts must be in the name of the City of New York and must be in a form approved by the DDC. The receipt must be accompanied by invoices or other documentation verifying the cost of the stored Approved Materials. Following the initial submission, the Design-Builder must submit to the DDC a monthly update of the itemized inventory statement as part of each subsequent Payment Request. The updated inventory statement must show additional Approved Materials received and stored, along with supporting documentation, and Approved Materials removed from storage since the last certified inventory statement;
- (vii) the Design-Builder must provide the DDC all documents necessary and requested by the DDC to evidence the transfer of title to the Approved Materials to the DDC, including bills of sale and the affidavits of title in forms acceptable to the DDC;
- (viii) the Design-Builder must submit a certification that all off-site Approved Materials have been inspected in accordance with Article 9 (*Quality Requirements*) of the Standard Project Requirements; and
- (ix) the Design-Builder must deliver to the DDC a material delivery and storage plan (a "**MDS Plan**") for the DDC's approval. Once the MDS Plan is approved, the Design-Builder may then store Approved Materials only in a manner consistent with the approved MDS Plan. The Design-Builder's MDS Plan must include:
  - (A) the name and location of the bonded Warehouse(s);
  - (B) a detailed description of the conditions of storage;
  - (C) a detailed description of the Approved Materials stored and duration of such storage;
  - (D) any plans for inspection and testing; and
  - (E) a description of all fees associated with storage, inspections, maintenance, testing, moving and any other kinds of expenses associated with off-site storage, and

in approving such a plan, the DDC will advise the Design-Builder of any requirements for the DDC's presence during the movement of items to or from any Warehouse.

- (c) The Design-Builder retains the risk of loss for any Approved Materials stored at a warehouse. If any of the Approved Materials stored in a warehouse are lost or become damaged, the Design-Builder must repair or replace them at no additional cost to the DDC. If a Monthly Payment has been paid prior to any damage or loss, the amount so allowed or a proportionate part of the amount, will be withheld from subsequent Monthly Payments until satisfactory repairs or replacement have been made.
- (d) The making of Monthly Payments with respect to any stored Approved Materials will not be deemed to be final acceptance by the DDC of those Approved Materials, nor will it relieve the Design-Builder of its responsibility for those Approved Materials.

#### 24.4 Parties Review, Confirmation and Approval of Payment Request

(a) **Pencil Copy of Payment Request**

At any time between the last day of each month and the tenth day of the subsequent month, the Design-Builder may submit a “pencil copy” of the Payment Request to the DDC. Following receipt of any “pencil copy” the Design-Builder should arrange to meet with DDC and the PMC to review the “pencil copy” Payment Request to confirm, among other things, the quantities or amounts of Work identified in the “pencil copy”. Any Payment Request submitted by the tenth day of each month in accordance with Section 24.1 (*Monthly Payment Request*) should be consistent with any pencil copy’s quantities or amounts of Work identified, discussed and confirmed between the Parties.

(b) **Payment Request Completeness Determination**

- (i) Within fifteen days of the DDC’s receipt of any Payment Request, the Parties will meet to discuss the contents of such Payment Request and the DDC will advise the Design-Builder in writing whether the Payment Request is complete or if any aspects are non-conforming to the requirements in this Agreement.
- (ii) To the extent any aspects of a Payment Request are incomplete or non-conforming, the Design-Builder must promptly (but no later than three days) resubmit the entire Payment Request. This process will continue until the DDC has informed the Design-Builder in writing that any Payment Request is complete.

(c) **Approval**

- (i) Within five days from DDC’s written notification that any Payment Request is complete under Section 24.4(b) (*Payment Request Completeness Determination*), the DDC must either approve or reject all or any portion of the amount requested by the Design-Builder in any such Payment Request.
- (ii) The DDC may reject all, or any portion of, any Payment Request if the DDC disputes that such amount is payable and owing to Design-Builder pursuant to the terms of this Agreement
- (iii) Upon receipt of any rejection of any portion of a Payment Request, the Design-Builder must promptly (but no later than five days from such rejection) re-submit the applicable Payment Request.
- (iv) Any continued dispute concerning any Payment Request may, following the DDC’s rejection of all, or any portion of, the Design-Builder’s second submission of a Payment Request, be resolved in accordance with Section 24.6 (*Disputes*).

**24.5 DDC Payment of Payment Requests**

- (a) Within thirty days of the DDC accepting a Payment Request under Section 24.4(c) (*Approval*), the DDC will pay the Design-Builder the undisputed Monthly Payment amount payable under such Payment Request minus:

(1) an amount equal to the Retainage Percentage of that undisputed amount;  
and

(2) any amounts the DDC is entitled to withhold under Section 24.7 (*DDC’s Right to Setoff*) and 24.9 (*Withholding*).

- (b) The thirty-day period for the DDC's payment will not begin until DDC has issued a written notification to the Design-Builder that it has approved any Payment Request or portion of a Payment Request.
- (c) No Monthly Payment or other payment to the Design-Builder or any use of the Project by the DDC will be deemed to constitute an acceptance of any of the Work or relieve the Design-Builder of any of its obligations or liabilities with respect to the Project or the Work, as provided in this Agreement.

#### 24.6 Disputes

- (a) Within seven days of receiving the DDC's determination under Section 24.4(c) (*Approval*) the Design-Builder must notify the DDC if it disputes any determination by the DDC to reject all or any portion of a Payment Request. If the Design-Builder does not notify the DDC of a dispute within that seven-day period, the Design-Builder will be deemed to have accepted the DDC's determination, including without limitation any amounts deducted.
- (b) If the Design-Builder notifies the DDC of a dispute in accordance with Section 24.6(a), the Design-Builder and the DDC will meet to seek to resolve the dispute. If the DDC and Design-Builder agree that all or a portion of the previously rejected amount is payable, the Design-Builder must request payment for such amounts in the following Payment Request and DDC will pay the agreed amount to the Design-Builder minus an amount equal to the Retainage Percentage of that agreed amount pursuant to Section 24.5.
- (c) If the DDC and the Design-Builder fail to resolve the dispute within twenty days of the Design-Builder's notice of dispute under Section 24.6(a), the matter will be referred to the Dispute Resolution Procedures.
- (d) If any amount is determined in accordance with the Dispute Resolution Procedures to be payable by the DDC, then within thirty days following receipt by DDC of a written requisition (together with all supporting documentation), the DDC will pay the determined amount to the Design-Builder minus an amount equal to the Retainage Percentage of that determined amount.

#### 24.7 DDC's Right to Setoff

Where any amounts are due and payable by the Design-Builder to any Indemnified Party under this Agreement, including any liquidated damages payable under Article 14 (*Time for Completion, Liquidated Damages and Early Completion Bonus*), the DDC may deduct and set-off against any payment due and payable from the DDC to the Design-Builder under this Agreement.

#### 24.8 Retainage

(a) **Retainage Percentage.**

As security for the Design-Builder's performance of its obligations under this Agreement, either: (i) the Design-Builder must post a retainage bond, letter of credit or other liquid security, in a form, and by an issuer, as may be approved by the DDC in an amount equal to 5% (the "**Retainage Percentage**") of the Lump Sum Amount or (ii) the DDC will retain the Retainage Percentage from each Monthly Payment in accordance with the terms of this Section 24.8.

(b) **Application of Retainage Amounts.**

The DDC may apply all or any portion of the total Retainage Amounts that it holds or may draw on any letter of credit, retainage bond or other liquid security, as applicable, at any time and for any reason described in Section 24.9 (*Withholding*).

(c) **Early Release of Retainage.**

- (i) **Designers** - Subject to Section 24.8(e), upon the DDC's approval of any Release for Construction Documents and the Design-Builder's commencement of all Construction Work, the Design-Builder may request in writing for a release of a portion of the Retainage Amounts to be paid or released, as applicable, to the Design-Builder solely for Design Work and deliver a requisition to the DDC setting forth such amounts. Promptly following receipt of such request and requisition, the DDC will, in its absolute discretion, either accept and pay or release such amounts (or a portion of such amounts) within fifty days or reject or respond with a more acceptable modification to any such request. Upon receipt of such released Retainage Amounts, the Design-Builder must promptly remit such released Retainage Amount to each of the applicable design firms that performed such Design Work, as applicable.
- (ii) **Smaller Subcontractors** – Subject to Section 24.8(e), upon completion of all Work required by any Subcontractor with a Subcontract (or all Subcontracts with the same Subcontractor for the Project in the aggregate) with a value of \$250,000 or less (a "**Small Value Contract**"), the DDC may release, in its absolute discretion, the Retainage Amounts associated with such Small Value Contract. Upon receipt of such released Retainage Amounts, the Design-Builder must promptly remit such released Retainage Amount to each of the applicable Small Value Contract Subcontractors that performed such Work.

In either case of (i) or (ii) above, any payment or release, as applicable, of such Retainage Amounts should not include any Retainage Amounts deemed reasonably necessary by the DDC to secure any ongoing obligations of any Persons performing ongoing Work, including for design integration and design oversight over the Construction Work and should also be reduced by any amounts that the DDC has applied, or on the day of such release, that the DDC determines that it may be entitled to apply against Retainage Amounts for various reasons, including unresolved claims by Subcontractors, the estimate of possible audit adjustments and an assessment of the risks to the DDC in making such a release of monies.

(d) **Release Upon Substantial Completion.**

Subject to Section 24.8(e), following the DDC's delivery of the Certificate of Substantial Completion, and within thirty days of receipt by the DDC of the requisition (together with all supporting documentation reasonably acceptable to the DDC), the DDC will release and return a portion of the total Retainage Amounts that it holds or maintains for its benefit, as applicable, to the Design-Builder equal to:

- (i) all Retainage Amounts previously retained or maintained for the DDC's benefit, up to the date of Substantial Completion, minus
  - (A) two hundred percent of the amount reasonably estimated by the DDC, after consultation with the Design-Builder, necessary to cover the costs of completing the remaining items required to achieve Final Completion; and
  - (B) any amounts that the DDC has applied, or on the day of such payment or release, as applicable, that the DDC determines that it may be entitled to

apply, against Retainage Amounts in accordance with Section 24.9 (*Withholding*) for various reasons, including, unresolved claims by Subcontractors, the estimate of possible audit adjustments and an assessment of the risks to the DDC in making such a release of monies.

- (e) The DDC will not release any Retainage Amounts to the Design-Builder, if a Design-Builder Default has occurred and is continuing at the time the Design-Builder would otherwise be entitled to a reduced Retainage Percentage or a release of Retainage Amounts under this Section 24.8 (*Retainage*), until such time that the Design-Builder Default has been cured.

(f) **Final Release.**

Any remaining Retainage Amounts retained or held, as applicable, for the benefit of the DDC following Substantial Completion will be released by the DDC to the Design-Builder with each Monthly Payment, in an amount equal to the percentage of Work completed between Substantial Completion and Final Completion, with the final balance paid to the Design-Builder at the final payment under Section 24.9(f) (*Final Payment*).

24.9 **Withholding**

- (a) If:
  - (i) a Design-Builder Default has occurred under this Agreement (including its obligation to pay any resolved or unresolved Claim lawfully made against it by any Subcontractor, workman or other Person which arises out of or in connection with the performance of this Agreement or any other agreement with the DDC);
  - (ii) without limiting the generality of Section 24.9(a)(i), the Design-Builder fails to:
    - (A) rectify any defect or nonconforming Work within thirty days of the DDC notifying the Design-Builder of the defect or nonconforming Work;
    - (B) timely complete any Punch List items or any other remaining Work within the time period required under this Agreement;
  - (iii) any Claim (just or unjust) arising out of or in connection with this Agreement is made against any Indemnified Party;
  - (iv) the DDC determines that an audit adjustment for any Work or Extra Work under this Agreement may need to be made; or
  - (v) any Subcontractor fails to pay any Claims lawfully made against it by any Subcontractor, workman or other third person arising out of or in connection with this Agreement or any other agreement between the DDC and the Design-Builder;

the DDC may, in its absolute discretion, withhold out of any payment (final or otherwise and even though a payment has already been approved) an amount as the DDC may deem sufficient to protect itself and apply that amount in the manner as the DDC may deem proper to secure its protection or satisfy relevant Claims or release that amount once the relevant failure has been remedied.

- (b) All sums withheld and applied by the DDC under this Section will be deemed to be payments for the Design-Builder's account under this Agreement. The Design-Builder will re-invoice any amounts of Monthly Payment withheld under this Section 24.9 with the next

monthly Payment Request if, and once, the cause for such withholding has been removed or resolved, as agreed by the DDC.

- (c) If the DDC does not withhold out of any payment (final or otherwise) a sum for any of the circumstances described in Section 24.9(a), even though the circumstance has occurred at the time of the DDC's payment to the Design-Builder, the DDC will not forfeit its right to exercise such withholding from a future payment or any other rights or remedies it may be entitled to obtain such amount from the Design-Builder.
- (d) Nothing under this Agreement (including Section 24.8 (*Retainage*) and this Section 24.9 will create any obligation of the DDC of any kind to any Subcontractors, architects, mechanics, laborers, engineers, workmen or other third persons.
- (e) The right of the Design-Builder to any amount to be paid under this Agreement (even where any amounts have already been approved or determined as due) will be subject to and subordinate to the rights of the DDC under this Section 24.9.
- (f) Without limiting any other provision of this Section 24.9 or any other rights of the DDC under this Agreement, if the DDC conducts an investigation and discovers that the Design-Builder or any of its Subcontractors has failed to pay wages or supplements as required by this Agreement or the relevant Subcontract:
  - (i) the Design-Builder must pay to the DDC an amount equal to the DDC's cost of conducting that investigation, within fourteen days of receiving a demand from the DDC for such payment; and
  - (ii) if the Design-Builder fails or refuses to pay for the cost of any investigation within that fourteen day period, the DDC may withhold out of any payment (final or otherwise and even though a payment has already been approved) due to the Design-Builder under this Agreement, or under any other agreement between the Design-Builder and the DDC, an amount equal to the cost of such investigations plus a fifteen percent administrative charge.

All amounts withheld by the DDC under this Section 24.9(f) will be deemed to be payments made to the Design-Builder under this Agreement on account of the Contract Price.

- (g) DDC may withhold out of any payment due to the Design-Builder under this Agreement, any amounts required or permitted under Article 25 (*Prompt Payment of Subcontractors*). All amounts withheld and paid by the DDC to any of the Design-Builder's Subcontractor under Article 25 (*Prompt Payment of Subcontractors*), will be deemed to be payments made to the Design-Builder under this Agreement on account of the Contract Price.

#### 24.10 Final Payment

- (a) After receiving the Certificate of Final Completion, the Design-Builder must submit to the DDC its final Payment Request, together with the following:
  - (i) a general release executed by the Design-Builder waiving, upon receipt of final payment as agreed or determined in accordance with this Section 24.9(f), all future Claims against the City (not already brought against the City) with respect to the Work or this Agreement;
  - (ii) a certificate signed by the Design-Builder in the form attached in Exhibit 13 (*Completion Certificates*), certifying to the DDC that no overdue amounts owing to any Subcontractor remain unpaid and that the Project and all Work are free and

clear of all liens or claims arising out of or in connection with the performance of the Work by the Design-Builder or any of the Subcontractors;

- (iii) consent of the Design-Builder's Surety to the final payment; and
  - (iv) certificates of insurance confirming that insurance required by this Agreement to remain in effect after Final Completion remain in effect together with a certificate from the Design-Builder that it is not aware of any reason that those insurances will not be renewed to cover the period required by this Agreement.
- (b) Within ten days of receiving a complete final Payment Request that satisfies all of the requirements of Section 24.9(a), the DDC will notify the Design-Builder whether it accepts or rejects all or any portion of the final Payment Request.
  - (c) Within five days of receiving the DDC's determination under Section 24.9(b), the Design-Builder must notify the DDC if it disputes any determination by the DDC to reject all or any portion of the Payment Request. If the Design-Builder does not notify the DDC of a dispute within that five-day period, the Design-Builder will be deemed to have accepted the DDC's determination.
  - (d) If the Design-Builder notifies the DDC of a dispute in accordance with Section 24.9(c), the Design-Builder and the DDC will meet to seek to resolve the dispute.
  - (e) If the DDC and the Design-Builder fail to resolve the dispute within twenty days of the Design-Builder's notice of dispute under Section 24.9(c), the matter will be referred to the Dispute Resolution Procedures.
  - (f) Within thirty days of the amount due with respect to the final Payment Request being agreed or determined in accordance with this Section 24.9, the DDC will pay the agreed or determined amount to the Design-Builder.

#### 24.11 Late Payments

- (a) If either Party fails to make any payment when due under this Agreement, that Party must pay to the other Party, in addition to payment of the delayed payment, interest calculated at 2.625% per annum for each day of delay, from the date on which the payment was due (and the expiry of any applicable cure periods).
- (b) If the Design-Builder is paid interest, the proportionate share(s) of that interest will be forwarded by the Design-Builder to its Subcontractor(s).

#### 24.12 Payroll Records

- (a) The Design-Builder and its Subcontractors will keep such employment and payroll records as are required by Section 220 of the Labor Law. The failure of the Design-Builder or Subcontractor(s) to comply with the provisions of this 24.12 may result in the DDC declaring the Design-Builder in default or the withholding of payments otherwise due under this Agreement, or both.
- (b) At the time the Design-Builder makes application for each Payment Request, the Design-Builder must submit to the DDC a written payroll certification of compliance with the prevailing wage, minimum wage, and other provisions and stipulations required by Labor Law Section 220 and of compliance with the training requirements of Labor Law Section 220-h. This certification of compliance will be a condition precedent to payment

and no payment will be made to the Design-Builder unless and until each such certification will have been submitted to and received by the DDC.

- (c) This Agreement is executed by the Design-Builder with the express warranty and representation that the Design-Builder is not disqualified under the provisions of Section 220 of the Labor Law from the award of this Agreement.
- (d) Any breach or violation of this Section 24.12 will be deemed a breach or violation of a material provision of this Agreement, and grounds for a Design-Builder Default and termination by the DDC.

**25. PROMPT PAYMENT OF SUBCONTRACTORS**

- (a) The Design-Builder must timely pay, and must ensure that all its Subcontractors timely pay, all claims lawfully made against it by Subcontractors, workmen and third parties in connection with the Work.
- (b) Within seven days of receiving any sum from the DDC attributable to the Work performed by a Subcontractor, workmen and third parties, the Design-Builder must pay that sum to the Subcontractor, workmen or third-party, as applicable less an amount, if any, as the Design-Builder is authorized to retain under the Subcontract.
- (c) To the extent any Subcontractor remains unpaid any undisputed amounts following the time frames in Section 25(b):
  - (i) the Design-Builder must pay interest on amounts due to such Subcontractor at the rate of interest in effect on the date such payment is made by the Design-Builder computed in accordance with Section 756-b (1)(b) of the New York General Business Law. Accrual of interest will commence on the day immediately following the expiration of the seventh day following receipt of payment by the Design-Builder from the DDC and will end on the date on which payment is made; and
  - (ii) the DDC may withhold payment and directly pay Subcontractors as set forth in Sections 24.9(f) and 24.9(g).
- (d) Any payment made by the DDC to a Subcontractor under this Article 25 will be deemed to be a payment to the Design-Builder under this Agreement.
- (e) Nothing in this Article 25 will create any obligation of any kind from the DDC to any Subcontractors, workmen or other third persons.
- (f) The Design-Builder must include in its Subcontracts a provision requiring each Subcontractor to make payment to each of its Subcontractors for Work performed under this Agreement in the same manner and within the same time period set out above.
- (g) The Design-Builder must report in the Payee Information Portal payments made to each Subcontractor within thirty days of making the payment. If any of the information provided in accordance with Section 20.1(a)(i) (*Subcontracting*) changes prior to expiration or termination of the applicable Subcontract, the Design-Builder must update the information in the Payee Information Portal, as appropriate. Failure of the Design-Builder to list a Subcontractor or to report Subcontractor payments in a timely fashion, or a failure to do both, will entitle the DDC to declare the Design-Builder in default under this Agreement thirty days following the Design-Builder's receipt of the DDC's written notice of the Design-Builder's breach of this provision. Notwithstanding the foregoing, if the Design-Builder

cures such breach prior to the expiration of such thirty-day period, the DDC may not declare a Design-Builder Default for any such breach.

## **PART E – ALLOWANCE APPROVALS, CHANGES AND DELAY EVENTS**

### **26. ALLOWANCE APPROVALS, CHANGE ORDERS AND DDC DIRECTIVES**

#### **26.1 Request for Modification**

- (a) Except as otherwise provided for a Minor Waiver request under Section 7.8 (*Minor Waiver Request*), at any time, the DDC or the Design-Builder may propose a modification to the Work (a “**Modification**”), including a Value Engineering Proposal, by delivering a written notice (a “**Request for Modification**”) to the other party setting out the proposed change to the Work in sufficient detail to enable the other Party to respond in accordance with Section 26.2 (*Design-Builder Proposal*).
- (b) In order to prepare a Design-Builder Proposal in connection with a DDC initiated Request for Modification (a “**DDC Modification Request**”), the Design-Builder must (where requested by the DDC) first provide, within fifteen days of receipt of any DDC Modification Request, an estimate of the cost to prepare such Design-Builder Proposal, prior to incurring any costs in connection with its preparation. The DDC will notify the Design-Builder whether the estimate is acceptable within ten days of its receipt of that estimate.
- (c) Before or after issuing a Request for Modification, the DDC may require the Design-Builder, or the Design-Builder may request the DDC, as applicable, to attend a meeting with each other to discuss and define the proposed Modification.

#### **26.2 Design-Builder Proposal**

Promptly, and in any event within thirty days (or any longer period as the Parties may agree) after the Design-Builder either issues a Request for Modification to the DDC (a “**DB Modification Request**”) or it receives a DDC Modification Request, the Design-Builder must deliver to the DDC a proposal for implementing the proposed Modification (a “**Design-Builder Proposal**”) that complies with Section 26.2(a).

- (a) A Design-Builder Proposal must include the following:
  - (i) a general description of the proposed Modification, and if proposed by the Design-Builder, a reason for the change;
  - (ii) the Design-Builder’s proposed reasonable adjustment to the Contract Price (if any) on account of the Net Costs it would incur as a result of the proposed Request for Modification. In the case of any categories of costs that are subject to Exhibit 3 (*Extra Work and Allowance Work Costs*), such costs must be determined in accordance with Exhibit 3 (*Extra Work and Allowance Work Costs*);
  - (iii) a scope of Work (including all activities and implications associated with the proposed Modification) that must be described in sufficient detail and broken down into suitable components and activities to enable the DDC to evaluate the reasonableness of the proposed adjustment (if any) to the Contract Price;
  - (iv) a detailed and reasonable timetable for implementation of the proposed Modification and, if the Design-Builder believes that the proposed Modification would result in a delay to the Work, a Time Impact Analysis demonstrating that the

proposed Modification will result in an identifiable and measurable disruption to the Work;

- (v) any date or dates by which a decision by the DDC is critical;
  - (vi) any amendment that would be reasonably required to this Agreement as a result of the proposed Modification;
  - (vii) any consents or permits that will be required as a result of the proposed Modification and any variances from Applicable Law that may be required; and
  - (viii) any other supporting documentation as may be reasonably requested by the DDC.
- (b) The Design-Builder's proposed adjustment to the Contract Price in a Design-Builder Proposal may be subject to pre-audit review by the DDC and will be subject to post-audit review by the City Comptroller.

### 26.3 Review of Design-Builder Proposal

- (a) Promptly following receipt by the DDC of the Design-Builder Proposal, the Design-Builder must meet with the DDC to review, discuss and seek to reach agreement on the Design-Builder Proposal (or any changes to the proposed Modification or Design-Builder Proposal).
- (b) At any time, the DDC may (in its absolute discretion) withdraw a DDC Modification Request or reject a DB Modification Request or Design-Builder Proposal, for any reason. The DDC is not required to give reasons for any rejection.
- (c) Subject to Section 26.3(d), if the DDC notified the Design-Builder that its estimate for third party costs with respect to Design Work under Section 26.1(b) was acceptable and the DDC subsequently withdraws or rejects the relevant DDC Modification Request, the DDC must reimburse the Design-Builder for all reasonable and documented Subcontractor costs incurred by the Design-Builder with respect to Design Work in preparing the Design-Builder Proposal. The DDC will not be obligated to reimburse costs where the change was proposed by the Design-Builder.
- (d) If applicable, the amount payable by the DDC under Section 26.3(c) will not exceed the estimate provided under Section 26.1(b).

### 26.4 Allowance Approval

(a) **Generally.**

If the Parties agree on the proposed Modification and Design-Builder Proposal and an applicable Allowance is available to fund all, or a portion of, the cost of such proposed Modification:

- (i) the Allowance Approval must identify the applicable amount to be drawn from an Allowance identified in Section 22.4 (*Allowances*), and the remaining funding available in such Allowance both prior to, and following, the Allowance Approval;
- (ii) the Parties will comply with the terms in Section 22.5 (*Allowance Payment Request*).

(b) **Final Agreement.**

Except as otherwise expressly provided in this Agreement, once the Allowance Approval is signed by the DDC Representative and the Design-Builder Representative, it will represent the final agreement among the Parties regarding such Modification.

(c) **Combination Allowance Approval and Change Order.**

An Allowance Approval may be combined with a Change Order where such Modification can only be partially funded from Allowances, in which case, both the Change Order and the Allowance Order will represent the final agreement among the Parties regarding such Modification. Where there is a combined Allowance Approval and Change Order, only the Change Order portion will be subject to registration in accordance with Section 26.5(b) (*Final Agreement*).

(d) **Reduction in the Contract Price**

If an accepted Design-Builder Proposal results in a decrease in the Design-Builder's costs and expenses, any adjustment to the Contract Price included in the applicable Allowance Approval will be on the basis that:

- (i) unless a Value Engineering Proposal, to the extent the cost saving arises as a result of a reduction in the scope of the Work, the DDC will be entitled to 100% of the cost savings; and
- (ii) if a Value Engineering Proposal, the cost saving will be shared 50:50 by the DDC and the Design-Builder.

Such reduction will be reflected in a Change Order.

26.5 **Change Order**

(a) **Generally.**

Subject to Applicable Law, the DDC may issue a Change Order, where no remaining Allowances are available in whole, or in part, to fund the applicable Modification. The Change Order will include any adjustment (if any) to the Contract Price) and all supporting material provided by either Party in connection with the Modification.

(b) **Final Agreement.**

Any agreed upon Change Order will be signed by the DDC Representative and the Design-Builder Representative and will represent the final agreement among the Parties regarding such Modification, subject to registration pursuant to Section 328 of the City Charter.

26.6 **Completion Extension**

In connection with any Modification or Delay Event, the Parties may agree to a Completion Extension to any Guaranteed Completion Date, which will be subject to the DDC's approval in accordance with Section 27.6(b)(i) (*Entitlement to Applicable Relief*).

26.7 **Continuation of Work and Commencement of Extra Work**

- (a) The Design-Builder must not suspend performance of the Work during the negotiation of any Modification, except:
  - (i) as may be otherwise directed by the DDC in writing; or

- (ii) to the extent the suspension is otherwise expressly permitted under Section 35.4 (*Suspension Orders*) or Section 9.2 (*Safety Compliance Orders*).
- (b) Unless otherwise agreed in writing pursuant to a signed Allowance Approval or Change Order or until the DDC issues a DDC Directive, the Design-Builder will not be entitled or required to commence any Extra Work described in a DDC Modification Request, a DB Modification Request, or any Request for Proposal until the DDC has issued a Allowance Approval, Change Order or a DDC Directive as described in Section 26.8 (*DDC Directive*). Any verbal direction by any DDC employee to commence Extra Work will not be enforceable unless and until such direction is in the form of a written Allowance Approval, Change Order or DDC Directive.

#### 26.8 **DDC Directive**

- (a) A “**DDC Directive**” is a written directive prepared and signed by the DDC directing the Design-Builder to perform Extra Work, including where the Parties have not reached agreement on a Modification in connection with a Design-Builder Proposal or otherwise agreed on an Allowance Approval or a Change Order.
- (b) The DDC may at any time deliver to the Design-Builder a DDC Directive.
- (c) A DDC Directive must set out the kind, character and limits of the Extra Work that the Design-Builder is required to perform.
- (d) Upon receipt of a DDC Directive, the Design-Builder must promptly implement and perform the Extra Work as directed by the DDC in the DDC Directive and may request an Allowance Approval or Change Order, as applicable, for a Compensable Delay Event in accordance with Article 27 (*Delay Events*).

#### 26.9 **Value Engineering Proposals**

- (a) Value Engineering Proposals may be presented at any time before Substantial Completion. Initially, the Parties will, within the first thirty days following the NTP 1 Date consult and arrange a meeting to complete the following:
  - (i) review of any unsuccessful proposer’s alternative technical concepts for potential integration into the Project that were considered prior to the Agreement Date but not included in this Agreement;
  - (ii) review of any initial Value Engineering Proposals submitted by the Design-Builder; and
  - (iii) determination of whether the Design-Builder should prepare a Design-Builder Proposal in connection with any such Value Engineering Proposals discussed among the Parties.
- (b) To the extent the Parties agree to negotiate and advance any Value Engineering Proposal, the Parties will comply with Section 26.3 (*Review of Design-Builder Proposal and Change Order*).

27. **DELAY EVENTS**

27.1 **Entitlement to Request Applicable Relief**

- (a) If a Delay Event occurs, the Design-Builder may request one or more of the following in accordance with, and subject to, this Article 27 (“**Applicable Relief**”):
  - (i) an extension to the Guaranteed Completion Dates for one or more Completion Milestones pursuant to a Completion Extension issued;
  - (ii) relief from a Design-Builder Default under this Agreement; or
  - (iii) in the case of a Compensable Delay Event only, either an Allowance Payment Request or an adjustment to the Contract Price, in each case, in accordance with Article 26 (*Allowance Approvals, Change Orders and DDC Directives*) for any Net Costs that the Design-Builder has incurred or will incur as a direct result of a Compensable Delay Event.
- (b) Applicable Relief may be granted through one or more of the following “**Relief Authorizations**”:
  - (i) an extension to any Guaranteed Completion Date may only be granted pursuant to a Completion Extension approved by the DDC in accordance with Section 27.6(b)(i) (*Entitlement to Applicable Relief*);
  - (ii) relief from a Design-Builder Default may be granted by DDC following its determination that the Design-Builder is entitled to Applicable Relief in Section 27.6(b)(ii) (*Entitlement to Applicable Relief*);
  - (iii) to receive compensation for any Compensable Delay Event that has any remaining Allowances, through an Allowance Approval, in accordance with Section 26.4 (*Allowance Approval or Change Order*); or
  - (iv) to receive compensation for any Compensable Delay Event that has no applicable or remaining applicable Allowances, through a Change Order, in accordance with Section 26.5 (*Allowance Approval or Change Order*).

27.2 **Process for Requesting Applicable Relief**

- (a) The Design-Builder must comply with the procedures in this Section 27.2 to request Applicable Relief in connection with the occurrence of any Delay Event.
- (b) The Design-Builder must submit a notice that complies with Section 27.2(c) (an “**Initial Delay Event Notice**”) to the DDC promptly (and in any event within seven days) after the date that the Design-Builder first became aware, or should have become aware, that the relevant Delay Event has occurred or will occur, and will, or is reasonably likely to, have the effect or impact that is the subject of the Design-Builder’s request for Applicable Relief.
- (c) An Initial Delay Event Notice must:
  - (i) state that it is an Initial Delay Event Notice;
  - (ii) identify and describe in detail the relevant Delay Event (including any information then available to the Design-Builder having made due inquiry);

- (iii) describe any additional studies or investigations that the Design-Builder must perform to prepare a Detailed Delay Event Notice; and
  - (iv) state the Design-Builder's intention to request Applicable Relief for an extension of time and, where applicable, an adjustment to the Contract Price or request for an Allowance Approval under this Article 27, together with a description of any likely or foreseeable impacts on the Project Schedule or Net Costs that may be included in the Detailed Delay Event Notice and any associated documented supporting evidence.
- (d) In addition to the Initial Delay Event Notice, if the Design-Builder has not already provided information required under a Detailed Delay Event Notice, or the Design-Builder becomes aware of further details regarding the applicable Delay Event, the Design-Builder must submit a notice that complies with Section 27.2(e) (a "**Detailed Delay Event Notice**") to the DDC promptly (and in any event within thirty days) after the date that the Design-Builder first became aware, or should have become aware, that the relevant Delay Event had occurred or will occur, and will have the effect or impact that is the subject of the Design-Builder's request for Applicable Relief.
- (e) A Detailed Delay Event Notice must include:
- (i) a statement that it is a Detailed Delay Event Notice and full details of the relevant Delay Event (as available to the Design-Builder having made due inquiry);
  - (ii) full details of any extension of time or adjustment to the Contract Price (as applicable) requested under this Article 27;
  - (iii) a Time Impact Analysis (based on the then current Progress Schedule) demonstrating that the relevant Delay Event will result in:
    - (A) an identifiable and measurable disruption to the Work that will impact a Critical Path and why total float is not available;
    - (B) an extension to the time required to achieve the relevant Guaranteed Completion Date; and
    - (C) the start and end dates or expected end dates of the claimed periods of delay and, in addition a description of the operations that were delayed, an explanation of how they were delayed and the reasons for the delay;
  - (iv) details of the steps that the Design-Builder has taken or will take to mitigate the effect or impact of the Delay Event in accordance with Section 27.3 (*Mitigation*);
  - (v) evidence reasonably satisfactory to the DDC demonstrating that the Design-Builder will suffer a delay to one or more Critical Path activities or, where applicable with respect to Compensable Delay Events, incur Net Costs, despite the Design-Builder complying with its obligation to take steps to mitigate the effect or impact of the Delay Event in accordance with Section 27.3 (*Mitigation*) and to provide evidence of no concurrent delay in accordance with Best Management Practice;
  - (vi) a verified written statement of the details and estimates of the amounts of any delay damages, including categories of expected damages and projected monthly costs, together with documentary evidence of such damages as the Design-Builder may have at the time of its submission; and

- (vii) a statement indicating the Design-Builder's understanding that any time extension is granted only for purposes of permitting continuation of this Agreement and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages, as applicable, at any time.
- (f) If at the time of issuing the Detailed Delay Event Notice, the Delay Event is continuing, the Design-Builder must keep the DDC regularly (at least monthly) updated as to the status of the Delay Event, including any changes in the effects or impacts of the Delay Event on the Work.

### 27.3 Mitigation

The Design-Builder must act promptly and use Reasonable Efforts in accordance with Best Management Practice to mitigate the delay and any other adverse impact (including incurring Net Costs) of any event that is the subject of a notice under Section 27.2 (*Process for Requesting Applicable Relief*), including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work. In the event that the Design-Builder fails to take mitigation measures as required in this Agreement, the delay and excuse of performance permitted under this Agreement will be reduced to the extent that such mitigation measures, if taken, would have reduced the impact of such event on the Design-Builder.

### 27.4 Failure to Provide Required Notice or Information

Time is of the essence in the Design-Builder's delivery of the Initial Delay Event Notice and any Detailed Delay Event Notice, and if any notice or information is not provided to the DDC in accordance with the requirements of Section 27.2 (*Process for Requesting Applicable Relief*):

- (a) the Design-Builder will have irrevocably and forever waived and released any Claim or any right to request a Change Order, Allowance Approval, any extension of time or compensation or adjustment to the Contract Price (as applicable) with respect to the relevant Delay Event, accruing both before and after the seven day or thirty day notice requirement (as applicable) and until the Design-Builder submits the written notice of a Delay Event to the DDC; and
- (b) following one-hundred twenty days after the date the Design-Builder was required to submit a notice under Section 27.2 (*Process for Requesting Applicable Relief*), the Design-Builder will be deemed to have irrevocably and forever waived and released any and all rights to relief (including extension of time for performance of the Work or compensation) for any adverse effect attributable to such Delay Event.

### 27.5 Demonstration of Facts & Concurrent Delay

#### (a) Burden of Proof

The Design-Builder is responsible for clearly stating and demonstrating the facts and justification behind the occurrence of a Delay Event and the resulting direct and adverse impacts on it.

#### (b) Concurrent Delay

The Design-Builder will not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but only for the actual period of delay in completion of the Work as determined by the DDC in accordance with Section 27.6 (*Entitlement to Extension of Time and Compensation*), irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently

results from any act, fault or omission of any Design-Builder Party, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. Concurrent delay will be determined by utilizing a Time Impact Analysis as described in the Standard Project Requirements and in accordance with Best Management Practice.

## 27.6 Entitlement to Extension of Time and Compensation

### (a) Pre-Requisites for Applicable Relief.

The Design-Builder will be entitled to Applicable Relief in accordance with Section 27.6(b), only if the Design-Builder has satisfied all of the following:

- (i) complied with its applicable obligations under this Agreement, including Section 27.2 (*Process for Requesting Applicable Relief*), Section 27.3 (*Mitigation*) and Section 27.5 (*Demonstration of Facts & Concurrent Delay*);
- (ii) demonstrated, to the reasonable satisfaction of the DDC, that a Delay Event has occurred or will occur;
- (iii) demonstrated, to the reasonable satisfaction of the DDC, that a Delay Event was the direct cause or will be the direct cause of:
  - (A) a delay in achieving a Completion Milestone by the applicable Guaranteed Completion Date;
  - (B) where the Delay Event occurs after the Guaranteed Completion Date for achieving completion of any Completion Milestone, a further delay in achieving completion of any Completion Milestone; or
  - (C) in the case of a Compensable Delay Event only, the Design-Builder incurring Net Costs; and
- (iv) demonstrated, where applicable, to the DDC, including through a Time Impact Analysis, that (i) the relevant Delay Event will result in an identifiable and measurable disruption to the Work that will extend the time required to achieve completion of the applicable Completion Milestone by the Guaranteed Completion Date and (ii) there was no concurrent delay caused by the Design-Builder .

### (b) Entitlement to Applicable Relief.

Within forty-five days of receipt of a complete and final Detailed Delay Event Notice for any Delay Event, the DDC will notify the Design-Builder of its determination as to whether the Design-Builder is entitled to Applicable Relief as follows:

- (i) in the case of any Delay Event where the Design-Builder has satisfied the requirements in Section 27.6(a) (*Entitlement to an Extension of Time and Compensation*), the Guaranteed Completion Date for any applicable Completion Milestone will be extended through a Completion Extension by the time the DDC determines to be reasonable based on the evidence provided to the DDC regarding the effect or impact of the applicable Delay Event on the Design-Builder's performance of the Work;
- (ii) in the case of any relief from a Design-Builder breach or Design-Builder Default, the applicable breach or Design-Builder Default will be waived by the DDC for the

time the DDC determines to be reasonable for the applicable Delay Event based on the information satisfying the requirements in Section 27.6(a) (*Entitlement to an Extension of Time and Compensation*); or

- (iii) in the case of a Compensable Delay Event only, where the Design-Builder has satisfied the requirements in Section 27.6(a) (*Entitlement to an Extension of Time and Compensation*), the Design-Builder will be entitled to an amount that the DDC determines to be reasonable to compensate the Design-Builder for any Net Costs in connection with the applicable Compensable Delay Event, to be granted to the Design-Builder in connection with:
  - (A) where there are any Allowances available to fund such Net Costs, through an Allowance Approval under Section 26.4 (*Allowance Approval*); or
  - (B) where there are no remaining Allowances available to fund such Net Costs, through an adjustment to the Contract Price under a Change Order under Section 26.5 (*Change Order*).

The Design-Builder will only be compensated for delay damages, (unless otherwise expressly agreed as part of a lump sum under Exhibit 3 (*Extra Work & Allowance Work Costs*), as and when such delay damages have actually occurred.

## 27.7 Disputes

If the Design-Builder disputes any determination by the DDC regarding any Design-Builder request for relief under this Article 27, then the Design-Builder must notify the DDC within ten days of the DDC's determination and if the Parties fail to resolve the dispute within a further twenty days of that notice, the matter will be resolved in accordance with Article 41 (*Dispute Resolution Procedure*).

## 27.8 Continuation of Work

The Design-Builder must not suspend performance of the Work as a result of a Delay Event, or while requesting Applicable Relief with respect to a Delay Event, except:

- (a) as may be otherwise directed by the DDC in writing; or
- (b) to the extent the suspension is otherwise expressly permitted under Section 35.4 (*Suspension Orders*) or Section 9.2 (*Safety Compliance Orders*).

## 27.9 Sole Remedy

The Design-Builder's sole remedy in relation to any Delay Event will be the operation of this Article 27.

## 28. FORCE MAJEURE & CHANGES IN APPLICABLE STANDARDS

### 28.1 Force Majeure

#### (a) Effect of Force Majeure on Obligations

Without limiting Article 27 (*Delay Events*), neither Party may bring a Claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any Losses or damages incurred by that other Party if a Force Majeure Event occurs and the Affected Party is prevented from carrying out its obligations by that Force Majeure Event.

(b) **Relief**

The Design-Builder may only claim an extension of time with respect to a Force Majeure Event in accordance with, and subject to, Article 27 (*Delay Events*).

(c) **Consultation**

As soon as practicable following the Design-Builder's notification of a Force Majeure Event, the Parties must consult with each other in good faith and use all Reasonable Efforts to agree to appropriate terms to mitigate the effects or impacts of the Force Majeure Event and facilitate the continued performance of this Agreement.

(d) **Unable to Agree**

If no such terms are agreed on or before the date falling one hundred twenty days after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its relevant obligations under this Agreement for a continuous period of more than one hundred eighty days (including, if applicable, the one hundred twenty day period referred to above) (an "**Extended Force Majeure Event**"), the Design-Builder may request that this Agreement be terminated, and/or the DDC may terminate this Agreement in accordance with Article 37 (*Termination for Extended Force Majeure Event*).

28.2 **Changes in Applicable Standards**

- (a) To the extent any Applicable Standards required under this Agreement are modified and become materially different from those in effect as of the Setting Date (a "**P&T Standard Change**"), the Design-Builder will be required to implement such P&T Standard Change, unless otherwise determined by the DDC under this Section 28.2 (*Change in Applicable Standards*). A P&T Standard Change does not constitute a Change in Law.
- (b) To the extent the Design-Builder becomes aware of any P&T Standard Change, the Design-Builder must promptly, but no later than within thirty days following the date the Design-Builder knew, or should have known, of such P&T Standard Change, notify the DDC of such P&T Standard Change. Any such notification must explain the P&T Standard Change in sufficient detail to allow the DDC to objectively assess any schedule or cost implications associated with implementing such P&T Standard Change.
- (c) Promptly following the DDC's receipt of such notice of a P&T Standard Change, the Parties will meet and confer, and the DDC will determine, in its discretion, whether:
- (i) the P&T Standard Change is necessary and appropriate for the Project;
  - (ii) a meaningful extension to a Guaranteed Completion Date will be required to implement the P&T Standard Change, in which case the Design-Builder may claim a Delay Event; and
  - (iii) meaningful Net Costs or Extra Work will be required to implement the P&T Standard Change, in which case the Design-Builder may claim a Compensable Delay Event.
- (d) If the DDC determines that the P&T Standard Change is necessary and appropriate for the Project, but neither (ii) or (iii) above apply, then the Design-Builder must implement such P&T Standard Change at its own cost and expense and without any entitlement to claim a Delay Event or Compensable Delay Event.

- (e) If the DDC does not determine a P&T Standard Change is necessary and appropriate for the Project or for any other reason as determined by the DDC, the DDC may issue a written waiver to the Design-Builder regarding its implementation of such P&T Standard Change and the Design-Builder will not be required to implement any such P&T Standard Change.

## **PART F – WARRANTIES, DEFECTS AND LIABILITY**

### **29. WARRANTIES**

#### **29.1 General Warranties**

- (a) The Design-Builder warrants to the City that:
  - (i) all Design Work performed under the Contract Documents, including that done by its Subcontractors and manufacturers, will be completed in accordance with the requirements of the Contract Documents, and will be performed in accordance with the standard of care, skill and diligence as would be provided by an engineering or architecture firm experienced in supplying similar services nationally in the United States of America to entities owning projects of technology, complexity and size similar to that of the Project;
  - (ii) all Construction Work (including all materials and equipment furnished as part of the Construction Work) will be:
    - (A) completed in accordance with the requirements of the Contract Documents;
    - (B) new, unless otherwise specified in the Contract Documents;
    - (C) of good quality, undamaged and in conformance with all requirements of the Contract Documents;
    - (D) free of all defects in materials and workmanship, and
    - (E) the completed Project must perform its intended functions as explicitly described or implied in the Contract Documents; and
  - (iii) the Final Design Documents, the final Construction Documents, the Record Drawings and all other records required under this Agreement will be:
    - (A) accurate and complete;
    - (B) in conformance with all requirements of the Contract Documents; and
    - (C) accurate in their reflection of the Project's condition as of Final Completion.
- (b) The Design-Builder's warranty obligation excludes defects caused by abuse, alterations or failure to maintain the Work by persons other than a Design-Builder Party or caused by any Delay Event.
- (c) Nothing in this warranty is intended to limit any manufacturer's or Subcontractor's warranty that provides more extensive warranty rights (including longer warranty term) than set forth in this Article 29 or the Contract Documents. Upon Final Completion, the Design-Builder will provide and assign to the City all manufacturers' warranties that extend past Final

Completion, to be enforceable directly by the City, as well as any such Subcontractors' warranties that are not extended to the City already.

- (d) The Project Requirements may provide for certain warranties of portions of the Work. These warranties are intended for the greater assurance of the City and not as a substitute for rights that the City otherwise has under this Agreement. No requirement of this Agreement with respect to warranties by the Design-Builder nor any guarantee or warranty given to the Design-Builder or the City by any manufacturer will be deemed to be a limitation upon any rights that the City would have, either expressed or implied, in the absence of these guarantees or warranties.

## 29.2 **Manufacturer Certification**

- (a) Where the Project Requirements require materials and equipment to conform to certain specifications or requirements of any organizations, the Design-Builder must deliver to the City the manufacturer's written certification that the applicable materials or equipment conform to the applicable standard or tentative specifications or requirements. This certification must be provided before the applicable materials or equipment are installed as part of the Work.
- (b) The DDC may reject any certification under Section 29.2(a) if it reasonably determines that it is incorrect, improper or otherwise unsatisfactory by notifying the Design-Builder thereof, within thirty days after the receipt of such certification, setting forth in reasonable detail its reasons for such rejection.

## 29.3 **Extension of Subcontractors Warranties to the DDC**

- (a) Where warranty standards are not specifically designated in the Project Requirements for any Work anticipated to be subcontracted, the Design-Builder must obtain, from all of its Subcontractors, the appropriate representations, warranties, guarantees, and obligations, in accordance with Best Management Practice, for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies provided by these Subcontractors, and must cause these warranties to be expressly extended to the DDC.
- (b) The requirements of Section 29.3(a) will not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to the City using Reasonable Efforts.
- (c) The City will have the right to exercise remedies under any such warranties extended by a Subcontractor if the Design-Builder has breached its obligation to diligently pursue such remedies under these warranties.

## 29.4 **Design-Builder Use of Project Equipment**

Any installed equipment (heating, ventilation and cooling systems, elevators, or otherwise) used by the Design-Builder during the performance of the Work prior to Substantial Completion must be refurbished or replaced to the required standard indicated in Section 29.1 (*General Warranties*), and the Design-Builder must ensure that any manufacturers' warranties for such equipment are extended to satisfy the minimum warranties required in this Agreement, which in either case, must commence as of Substantial Completion.

30. **RECTIFICATION OF DEFECTS DURING WARRANTY PERIOD**

30.1 **Warranty Period**

- (a) Subject to any extension under Section 30.3 (*Extension of Warranty Period*), the “**Warranty Period**” is:
- (i) other than that referred to in 30.1(a)(ii):
    - (A) for all Work completed on or prior to Substantial Completion, the period expiring twenty-four months from the date of Substantial Completion; and
    - (B) for all Work completed during the period from the date of Substantial Completion to Final Completion, the period expiring twenty-four months from Final Completion; and
  - (ii) with respect to any element of the Work where the Project Requirements specify a warranty period that would expire after the date referred to in clause (i), the period specified in the Project Requirements,

in each case, or any longer period to the extent required by any Standards of Performance.

- (b) The Warranty Period is in addition to, not in lieu of, the DDC’s statutory rights under Applicable Law, as it pertains to defects, latent defects and non-conforming Works. The Warranty Period applies only to the Design-Builder’s obligation to correct defects in accordance with Section 30.2 (*Rectification of Defects at Any Time*) and is not intended to constitute a period of limitations for any other rights or remedies the DDC may have regarding the Design-Builder’s performance under this Agreement and will not impair or limit the DDC’s statutory rights available under Applicable Law.

30.2 **Rectification of Defects and Nonconforming Work at Any Time**

- (a) Where the DDC notifies the Design-Builder, or the Design-Builder becomes aware of any nonconforming Work before Final Completion or any defects within the applicable Warranty Period, the Design-Builder must, at its cost, promptly and completely correct such defects or nonconforming Work, as applicable.
- (b) The Design-Builder must within seven days of receipt of written notice from the DDC that any portion of the Work is defective or, not in conformance with this Agreement, (as applicable) take meaningful steps to commence correction of the defects or nonconforming Work, including the correction, removal or replacement of the defective or nonconforming Work and any damage caused to other parts of the Work affected by the defects or nonconforming Work.
- (c) If the Design-Builder fails to commence the necessary steps within the seven-day period referred to in Section 30.2(b), the DDC may take any steps that it considers necessary to correct the defective or nonconforming Work.
- (d) If the City performs corrective Work, or engages a third party to do so, the Design-Builder must reimburse the City for all costs and expenses incurred by the City in performing the correction, within fourteen days of receiving a demand from the City.
- (e) If, in the DDC’s judgment, any defective or nonconforming Work (as applicable) creates an Emergency, the seven-day periods identified in 30.2(b) and 30.2(c) will not apply.

- (f) The DDC's and the City's rights under this Section 30.2 are in addition to, and do not qualify, any other rights and remedies available to the DDC under this Agreement or Applicable Law, including for latent defects.

### 30.3 **Extension of Warranty Period**

If any item of Work is repaired or replaced during the last twelve months of the then current Warranty Period for that Work, the Warranty Period for that item of Work will be extended for an additional twelve months from the date the repair or replacement is completed and Section 30.2 (*Rectification of Defects and Nonconforming Work at Any Time*) will continue to apply with respect to that Work for the extended Warranty Period.

## 31. **CONSEQUENTIAL LOSS**

- (a) Subject to Section 31(b) and the rights offered to the DDC under Article 32 (*Indemnity from the Design-Builder*), neither Party will have the right to claim damages, including punitive and incidental damages, against the other Party for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any Losses claimed by either Party are for Indirect Losses.
- (b) The limitation in Section 31(a) will not apply to or limit either Party's right to recover from the other Party:
  - (i) any Losses (excluding defense costs) to the extent that they are either covered by the proceeds of insurance required to be insured against under Article 33 (*Insurance & Restoration*), or to the extent the Design-Builder is deemed to have self-insured against the Loss in accordance with Article 33 (*Insurance & Restoration*);
  - (ii) Losses arising out of fraud, corruption, or other criminal activity on the part of the relevant Party;
  - (iii) liquidated damages payable by the Design-Builder to the DDC under Article 14 (*Time for Completion, Liquidated Damages and Early Completion Bonus*); or
  - (iv) amounts payable by the Design-Builder to the DDC under any indemnity in this Agreement in respect of Third Party Claims.

## **PART G – INDEMNITIES AND INSURANCE**

### 32. **INDEMNITY FROM THE DESIGN-BUILDER**

#### 32.1 **General Indemnity**

To the fullest extent permitted by Applicable Law, the Design-Builder must release, defend, indemnify and hold harmless the Indemnified Parties on demand from and against any and all liability for arising from Third Party Claims with respect to:

- (a) any breach of this Agreement by the Design-Builder or any negligence, strict liability or intentional tortious act in the performance by the Design-Builder or any Design-Builder Party of the obligations under this Agreement, which contribute to or cause, any of the following:
  - (i) death, sickness and bodily injury;

- (ii) loss of, or damage to, tangible property; or
  - (iii) any claim or assertion by any other developer or contractor that any Design-Builder Party interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause disruption, delay or loss;
- (b) non-payment of amounts due under a Subcontract at any-tier as a result of furnishing materials or services to Design-Builder or any of its Subcontractors in connection with the Work, to the extent that the DDC has paid the Design-Builder all applicable undisputed amounts then due and payable from the DDC to the Design-Builder;
  - (c) failure of the Design-Builder to comply with Applicable Law, Applicable Standards or a Governmental Approval; or
  - (d) any other failure by the Design-Builder or any Design-Builder Party to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or the other Contract Documents.

### 32.2 Indemnity with respect to Hazardous Materials and Intellectual Property

Without limiting the generality of Section 32.1 (*General Indemnity*), to the fullest extent permitted by Applicable Law, the Design-Builder must release, defend, indemnify and hold harmless the Indemnified Parties on demand from and against any and all Third Party Claims to the extent related to:

- (a) Hazardous Materials introduced or brought onto the Project Site by any Design-Builder Party;
- (b) the failure by the Design-Builder or any Design-Builder Party to comply with any Project Requirements or the Contract Documents relating to Hazardous Materials;
- (c) any actual or threatened Design-Builder Release of Hazardous Materials;
- (d) any Claim or proceeding made or brought against an Indemnified Party, alleging that the Indemnified Party's or any Design-Builder Party's use of any Work Product or Intellectual Property provided to the DDC under the terms of this Agreement or any materials, plant, machinery or equipment (whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of Work), infringes, violates or is an authorized used of any Intellectual Property of a third party.

### 32.3 Intellectual Property

Without limiting any other rights of the DDC under this Agreement, if as a result of a Claim referred to in Section 32.2(d) an injunction is granted preventing the Design-Builder or the DDC from using any portion of the Work, the Design-Builder must, without cost or expense to the DDC:

- (a) promptly take reasonable steps to procure the right to use the Work; and
- (b) if the Design-Builder does not procure the right to use the Work within a reasonable time:
  - (i) promptly remove any portion of the Work that is subject to the injunction and, if the DDC has already paid amounts on account of the Contract Price with respect to that Work, refund these amounts to the DDC;

- (ii) promptly modify the Work or take any other steps necessary to ensure compliance by the Design-Builder and the DDC with the injunction, all to the satisfaction of the DDC; or
- (iii) replace the Work, with Work that is not subject to an injunction and that does not infringe any patent, copyright or other Intellectual Property right.

#### 32.4 Exclusions from Indemnity

The Design-Builder will not be responsible or be obliged to indemnify an Indemnified Party to the extent that the Claims or liability for Losses arise solely as a direct and proximate result of the fraud, gross negligence, recklessness or intentional tortious act of that Indemnified Party. Insofar as the facts or Applicable Law relating to any of the foregoing would preclude the Indemnified Parties or their officials or employees from being fully indemnified by the Design-Builder, the Indemnified Parties and their officials and employees will be partially indemnified by the Design-Builder to the fullest extent permitted by Applicable Law.

#### 32.5 No Limitation on Indemnities

- (a) Each indemnity by the Design-Builder under any provision of this Agreement is without limitation to any indemnity by the Design-Builder under any other provision of this Agreement. The Design-Builder's obligation to indemnify, defend and hold harmless the Indemnified Parties will neither be (i) limited in any way by the Design-Builder's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnified Parties to avail themselves of the benefits of such insurance.
- (b) The Design-Builder's indemnity will cover any Indemnified Party's costs and expenses associated with the applicable Third Party Claim, including all costs and expenses incurred in defending the underlying claim and those incurred in connection with the enforcement of any indemnification provisions in this Agreement by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation under this Agreement contemplates (1) full indemnity in the event of liability imposed against the Indemnified Parties without negligence and solely by reason of statute, operation of Applicable Law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnified Parties either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of Applicable Law, or otherwise). Where partial indemnity is provided under this Agreement, all costs and expenses shall be indemnified on a pro rata basis.

#### 32.6 Actions by or against Third Parties

- (a) If any claim is made or any action brought in any way relating to this Agreement other than an action between the DDC and the Design-Builder, the Design-Builder must diligently render to the DDC without additional compensation all assistance that the DDC may reasonably require of the Design-Builder in connection with such claim or action.
- (b) The Design-Builder must report to the DDC in writing within five Business Days of the initiation by or against the Design-Builder of any legal action or proceeding relating to this Agreement.

### 32.7 Conduct of Third Party Claims

- (a) Where an Indemnified Party wishes to make a Claim under this Agreement against the Design-Builder in relation to a Third Party Claim for which the Design-Builder is required to provide indemnity under this Agreement, the Indemnified Party must promptly give notice of the relevant claim setting out the full particulars and any related correspondence or documentation from the third party asserting the Third Party Claim, including a copy of the Third Party Claim (if applicable).
- (b) An Indemnified Party may, by providing written notice to the Design-Builder, require the Design-Builder to defend any such Third Party Claim against that Indemnified Party even if the Third Party Claim is groundless, false or fraudulent.
- (c) If an Indemnified Party exercises its rights under Section 32.7(b):
  - (i) the Design-Builder must defend such Third Party Claim, with counsel acceptable to the City Corporation Counsel, at the Design-Builder's sole expense;
  - (ii) the Design-Builder must not, without obtaining express advance written permission from the City Corporation Counsel, raise any defense involving in any way the jurisdiction of a Tribunal over the person of the City, the immunity of an Indemnified Party, the governmental nature of the City or the provisions of any statutes concerning suits against the City; and
  - (iii) if all or a portion of the Third Party Claim is covered by insurance as required by this Agreement and the applicable insurer has reserved rights or disclaimed coverage as to part or all of the Third Party Claim, any defense counsel appointed by the applicable insurer will not automatically be deemed satisfactory to the City Corporation Counsel.
- (d) Despite the Design-Builder selecting counsel satisfactory to the City Corporation Counsel in any action, an Indemnified Party may employ either in-house counsel (including the City Corporation Counsel) or separate external legal counsel to represent the Indemnified Party and the Design-Builder, where external legal counsel is engaged by an Indemnified Party, must pay the reasonable fees, costs and expenses of such external counsel if:
  - (i) the Indemnified Party's use of the counsel chosen by the Design-Builder to represent the Indemnified Party would present that counsel with a conflict of interest;
  - (ii) the actual or potential defendants in, or targets of, a Third Party Claim include both the Indemnified Party and the Design-Builder, and the Indemnified Party has reasonably concluded that there may be legal defenses available to it or to other Indemnified Parties that are different from or additional to the legal defenses available to the Design-Builder; or
  - (iii) the Design-Builder has not employed counsel to represent the Indemnified Party within a reasonable time after notice that the action has been instituted.
- (e) The Design-Builder must not enter into any settlement or compromise in connection with a Third Party Claim against the City without the City's prior written consent.

### 33. **INSURANCE & RESTORATION**

#### 33.1 **Generally**

- (a) The Design-Builder must obtain, pay all premiums and maintain, or cause to be obtained, paid and maintained, the insurance policies identified in this Agreement and Exhibit 6 (*Insurance Coverage Requirements*) (collectively, the “**Insurance Policies**”). The requirements for insurance in this Agreement (i) will not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Design-Builder and (ii) are not a representation by the DDC as to the adequacy of the insurance necessary to protect the Design-Builder against the obligations imposed on it by this Agreement and any applicable Project Requirements. The Design-Builder must obtain, pay all premiums and maintain, or cause to be obtained, paid and maintained, the Insurance Policies against all claims, losses and expenses for injuries to persons, death or damages to property which may arise from, or in connection with, any Design-Builder Party’s performance of the Work.
- (b) All policies must contain no wrap-up exclusion and as a result, the limits of coverage for all types of insurance for the benefit of the City, and its officials and employees, and any other additional insureds required under this Agreement are the greater of (a) all the insurance coverage and limits carried by or available to the Design-Builder or its Subcontractor, or (b) the minimum insurance coverage requirements and limits in this Agreement.
- (c) Any Insurance Policies obtained by the Design-Builder or any of its Subcontractors with respect to the Project in excess of, or broader than, the minimum required coverage or minimum required limits, or both, must be available to the City and will be available to respond to any claim asserted against the additional insureds that may arise out of or is in any way connected with this Agreement.

#### 33.2 **Compliance with Insurance Policies**

The Design-Builder must:

- (a) comply with the terms, conditions and requirements of all Insurance Policies; and
- (b) not do or omit to do anything, or permit (insofar as it is within its power) any other Person to do or omit to do anything, on or with respect to the Project Site, the Project or with respect to the Work that: (i) results in or could reasonably be expected to result in the cancellation of any Insurance Policies, (ii) will entitle any insurer to refuse to pay any claim under any Insurance Policies (in whole or in part) or (iii) will otherwise prejudice the interests of the City in an Insurance Policy or claim under any Insurance Policy.

#### 33.3 **Application of Insurance Proceeds**

All insurance proceeds received for physical property damage to the Project under any Insurance Policies required under Exhibit 6 (*Insurance Coverage Requirements*), other than business interruption insurance maintained as part of the Insurance Policies (the “**Insurance Proceeds**”), must be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Work in respect of which the proceeds were received. The City, including its officials and employees, must be made named an additional insured and the City must be named loss payee on all Insurance Policies and the Design-Builder will be responsible for all deductibles, self-insured retentions and losses not paid by commercial insurance, whether or not the City is an insured under the Insurance Policy.

### 33.4 **Support of Indemnification**

The insurance coverage that the Design-Builder is required to provide under this Agreement will support, but is not intended to limit, the Design-Builder's indemnification obligations otherwise set out under this Agreement.

### 33.5 **Notification of Damage or Injury to Persons or Property**

The Design-Builder must comply with the following notification requirements in the event of any loss, damage or injury to Work, persons or property, or any accidents arising out of the Work:

- (a) The Design-Builder must make a full and complete report in writing to the DDC within three days after the occurrence.
- (b) The Design-Builder must also send written notice of any such event to all insurance carriers that issued potentially responsive policies (including commercial general liability insurance carriers for events relating to the Design-Builder's own employees) no later than twenty days after such event and again no later than twenty days after the initiation of any resulting claim or action, or both. Such notice must contain the following information:
  - (i) the number of the insurance policy;
  - (ii) the name of the Named Insured;
  - (iii) the date and location of the incident, and the identity of the persons injured or property damaged; and
  - (iv) for any policy on which the City or the PMC are Additional Insureds, such notice must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured, such other Additional Insureds, as well as the Named Insured."
- (c) The Design-Builder must provide DDC with copies of all notices of any claim made by the Design-Builder or any other party under any insurance obtained in connection with the Project, promptly (and in any event within five days) of the occurrence or receipt of the claim, denial of the claim (if applicable) and, on a quarterly basis, a summary of all claims (open and closed).
- (d) At least thirty days prior to any cancellation, termination, non-renewal or reduction of coverage, or any modification to a policy that materially affects the City or any additional insured's coverage, the Design-Builder must provide notice to DDC and the City Comptroller at the address below.

Whenever such notice is sent under an Insurance Policy on which the City is an Additional Insured, the Design-Builder must provide copies of the notice to the City Comptroller, the DDC and the City Corporation Counsel. Copies to the City Comptroller must be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York, 10007. Copies to the City Corporation Counsel must be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

If the Design-Builder fails to provide any of the required notices in (a) or (b) above to any appropriate insurance carriers in a timely and complete manner, the Design-Builder must indemnify the City, as applicable, for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City or the PMC, as applicable.

33.6 **Protection of City Property and Restoration of the Project**

- (a) During the performance of the Work and up to the date of the DDC's countersigning the Certificate of Final Completion, the Design-Builder will be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft or vandalism, or any combination of each, and in the event of such damage, loss, injury, theft or vandalism, or any combination of each, it will promptly replace and repair such Work at the Design-Builder's sole cost and expense, as provided in this Agreement or directed by the DDC.
- (b) The Design-Builder must take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from any Design-Builder Party's performance under, or in accordance with, this Agreement, including the duty to provide, place or replace, and adequately maintain at or about the Project site suitable and sufficient protection such as lights, barricades, and enclosures.
- (c) The Design-Builder assumes the risk of, and will be responsible for, any loss or damage to City property, including the Work, the Project or property and equipment leased by the City, used or encountered in the performance of this Agreement, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement by any Design-Builder Party.
- (d) The Design-Builder will be responsible for the damage or destruction of any property caused by any Design-Builder Party (including to the Project or any of the Work) in connection with this Agreement, and the Design-Builder must, at its own expense, repair, rebuild, restore or replace such damaged or destroyed property to a condition at least equal to the condition of such property before such damage or destruction occurred.
- (e) If Design-Builder fails to make such repair, replacement, or restoration within the established time frame required by the DDC, the DDC will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration (plus twenty five percent for supervisory and administrative personnel costs) from monies due to the Design-Builder or where such deduction is not feasible, charge such amounts directly to the Design-Builder.

33.7 **Reserved**

33.8 **No-Fault Restoration Obligations**

As provided in Section 7.7 (*Title to Construction Work*), the Design-Builder retains risk of loss for the Project and the Work, up and until Substantial Completion of the Project. If the Project or the Work suffers damage or destruction prior to Final Completion due to a Delay Event, subject to the terms and conditions under this Agreement, the Design-Builder must:

- (a) where such damage or destruction is valued at less than 10% of the Contract Price, promptly repair and restore the Project and the Work and seek reimbursement for such costs and expenses from applicable Insurance Policies; or
- (b) where such damage or destruction is valued at 10% or more of the Contract Price, as soon as practicable and in any event within ten days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project), provide the DDC with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the Work necessary to repair, replace and restore the damaged or destroyed portions of the Project and related assets (the

“**Reinstatement Works**”), and containing to the extent possible the details required to be included in the Reinstatement Plan under subsection of this Section.

- (c) As soon as reasonably practicable and in any event within fifteen days after the delivery of the Draft Reinstatement Plan, the Parties will meet and confer on the feasibility of the Draft Reinstatement Plan.
- (d) As soon as reasonably practicable and in any event within ten days after the Parties have met and discussed the Draft Reinstatement Plan, the Design-Builder must deliver to the DDC a revised plan (the “**Reinstatement Plan**”) to reasonably take into account the concepts discussed between the Parties and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works.
- (e) Once approved by the DDC the Design-Builder will promptly implement such Reinstatement Works in accordance with the Reinstatement Plan and will be subject to payment either through Insurance Proceeds for a non-compensable Delay Event or for a Compensable Delay Event, through a combination of Insurance Proceeds and a Compensable Delay Event to the extent permitted under Article 27 (*Delay Events*).
- (f) As directed by DDC, all Insurance Proceeds available for the repair, replacement or restoration of the Project are to be deposited by the Design-Builder in an insurance trust account, pursuant to the terms of an insurance trust agreement, to be established by the Design-Builder, as approved by the DDC.

### 33.9 Prosecution of Claims

- (a) Unless otherwise directed by the DDC in writing with respect to the City’s insurance claims, the Design-Builder will be responsible for reporting and processing all claims and potential claims to insurers. Such processing of claims must be given even where the Design-Builder may not be covered under an Insurance Policy if this Agreement requires that the City, its officials and employees, be additional insureds (for example, where the Design-Builder’s employees was insured).
- (b) The Design-Builder must:
  - (i) promptly report to the insurers under these policies any and all matters that may give rise to an insurance claim by the Design-Builder or the City;
  - (ii) promptly, using Reasonable Efforts, pursue these insurance claims in accordance with the claims procedures specified in these policies, whether for defense or indemnity or both; and
  - (iii) promptly provide the DDC with first- and third-party claims information, including loss reports, claims data, reserves, investigation, root cause analysis and preventive loss control measures.
- (c) The Design-Builder must enforce all legal rights against the insurer under the applicable Insurance Policies and Applicable Laws, including pursuing necessary litigation and enforcement of judgments. The Design-Builder will be deemed to have satisfied this obligation if:
  - (i) a judgment is not collectible through the exercise of lawful and diligent means in accordance with Best Management Practice; or

- (ii) in relation to the pursuit of litigation, there is no reasonable likelihood of success for the litigation.
- (d) The Design-Builder and its insurers must not, without obtaining the advance written consent of the City Corporation Counsel, raise any defense involving in any way the jurisdiction of a tribunal over the City, the immunity of the City or its officials, employees, consultants or agents, the governmental nature of the City, or the provisions of any statutes respecting suits against the City.
- (e) The DDC must:
  - (i) promptly notify the Design-Builder of the DDC's incidents, potential claims, and matters that may give rise to a City insurance claim, to tender to the Design-Builder's insurer the City's defense of the claim under the Insurance Policies; and
  - (ii) cooperate with the Design-Builder as reasonably necessary for the Design-Builder to fulfill its duties under this Agreement.
- (f) If at any time the Design-Builder:
  - (i) has not performed its obligations with respect to insurance coverage under this Agreement; or
  - (ii) is unable to enforce and collect any insurance for failure to (A) assert claims in accordance with the terms of the Insurance Policies or (B) prosecute claims using Reasonable Efforts,for purposes of (x) Section 31 (Consequential Loss) of the Agreement or (y) calculating withholdings in compensation to the Design-Builder on account of such failures, in each case, the Design-Builder will be treated as if it has elected to self-insure up to the full amount of insurance proceeds that would have been available had the Design-Builder performed its obligations and the DDC will be entitled to reduce any such compensation due and payable to the Design-Builder to the extent any amounts representing such insurance proceeds are not promptly paid by the Design-Builder. Except as provided in the foregoing, there must be no self-insurance program, unless approved by DDC.
- (g) If in any instance the Design-Builder has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by the City, the City may, but is not obligated to, report the claim directly to the insurer and process the claim.

## **PART H – DEFAULT AND TERMINATION**

### **34. TERMINATION BY DDC WITHOUT CAUSE**

#### **34.1 Right to Terminate Without Cause**

- (a) The DDC may terminate this Agreement at any time without cause by delivering a Termination Notice to the Design-Builder stating:
  - (i) that the DDC is terminating this Agreement under this Article; and
  - (ii) that this Agreement will terminate on the date specified in the Termination Notice, which must be a minimum of ten days after the date of delivering the Termination Notice.

- (b) This Agreement will terminate on the date specified in the Termination Notice referred to in Section 34.1(a).

### 34.2 Design-Builder's Obligations Upon Termination

- (a) If the DDC terminates this Agreement in accordance with this Article, the Design-Builder must promptly satisfy the following ("**Termination Requirements**"):
  - (i) stop all Work, and thereafter continue only such performance as may be expressly directed in writing by the DDC;
  - (ii) not enter into any further Subcontracts and ensure that its Subcontractors do not enter into any further Subcontracts and not terminate any insurance, surety bonds or other forms of security required by the Contract Documents;
  - (iii) unless instructed otherwise by the DDC, terminate all Subcontracts to the extent they relate to the Work;
  - (iv) expeditiously settle outstanding liabilities and Claims arising out of termination of Subcontracts;
  - (v) take no action which will increase the amounts payable by the City under this Agreement;
  - (vi) to the extent requested by the DDC, assign to the DDC or its nominee all of the right, title and interest of the Design-Builder under its Subcontracts;
  - (vii) provide the DDC a written statement of: (1) all Subcontracts, purchase orders, architect, engineer, or other contracts that are outstanding, as well as any change orders, amendments and modifications thereto; (2) the status of invoicing, payments and balance owing under each such Subcontract, purchase order and contract; (3) the status of performance and any claims asserted under each such Subcontracts, purchase order and contract; and (4) such other information as the DDC may determine to be necessary in order to decide whether to accept assignment of any such Subcontracts, purchase order or contract;
  - (viii) cancel, on the most favorable terms reasonably possible, any Subcontract, purchase order or contract, or portion thereof, that the DDC does not elect to accept by assignment and if requested by the DDC, settle, with the prior written approval of the DDC of the terms of settlement, outstanding liabilities to Subcontractors with respect to the Work terminated or discontinued;
  - (ix) transfer and deliver to the DDC or its nominee possession and control of the Project and return the Project Site in a safe and hazard-free condition;
  - (x) transfer and deliver to the DDC or its nominee all right, title and interest of the Design-Builder in and to:
    - (A) the completed Work;
    - (B) the Work in progress;
    - (C) supplies and materials produced or acquired for the Work;

- (D) any completed or partially completed Design Documents, Construction Documents, Final Design Documents and Record Drawings; and
- (E) all Intellectual Property and Work Product developed for the Project.
- (xi) Take all action that may be necessary, or that the DDC may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Design-Builder and in which the DDC has or may acquire an interest; and
- (xii) As authorized by the DDC, use its best efforts to sell at fair market value any inventory; but the Design-Builder: (1) must not take any action with respect to any items for which title has previously transferred to the DDC; (2) is not required to extend credit to any purchaser; and (3) may acquire the property itself, under the conditions prescribed and at prices approved by the DDC. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the DDC under the Contract Documents or paid in any other manner directed by the DDC.
- (b) The Design-Builder will not be liable for any warranties with respect to the Work that has not achieved Substantial Completion, but will be responsible for the cost to repair any Design-Builder's non-conforming Work as may be required by DDC for DDC's or any replacement contractor's achievement of Substantial Completion.

### 34.3 Termination Without Cause Payments

- (a) If this Agreement is terminated in accordance with this Article, the DDC must pay the Design-Builder an amount equal to the following ("**Termination Without Cause Payment**"):

the sum of the following:

- (i) the portion of the Lump Sum Amount (and any approved Allowance Approval Requests or Change Orders) that is due and payable by the DDC and applicable to the Work completed up to the date of termination and which has not been previously paid to the Design-Builder; plus
- (ii) the reasonable and properly documented out-of-pocket costs and expenses directly incurred by the Design-Builder (excluding overhead) in (A) demobilization and withdrawing its equipment and personnel from the Project Site, and (B) any unpaid amount under any supply contract for non-cancelable material and equipment (using commercially reasonable efforts to cancel) that is not capable of use except under this Agreement and has been fabricated solely for this Project; plus
- (iii) any properly documented cancellation and breakage fees incurred by the Design-Builder in terminating Subcontracts that are not acceded or transferred to DDC; plus
- (iv) the amount of any resolved Claim to which the Design-Builder is entitled as at the termination date under this Agreement; plus
- (v) either of the following:

- (A) if the Agreement is terminated within ninety days following registration pursuant to section 328 of the City Charter, one percent of the difference between the Lump Sum Amount and the total of all Monthly Payments made by DDC prior to the notice of termination (less amounts received from Allowances); or
- (B) if the Agreement is terminated on, or after, ninety days following registration pursuant to section 328 of the City Charter, an amount equal to the difference between the Lump Sum Amount and the total of all Monthly Payments made by DDC prior to the notice of termination (less amounts received from Allowances) multiplied by each of the following, as applicable:
  - (1) five percent of the first five million dollars; plus
  - (2) three percent of any amount between five million dollars and fifteen million dollars; plus
  - (3) one percent of any amount over fifteen million dollars, (collectively with (A) and (B) above, not to exceed 1% of the Lump Sum Amount,

minus the sum of any amounts:

- (i) due and payable by the Design-Builder under this Agreement to the DDC or any Indemnified Party; plus
  - (ii) received or receivable (or should have been receivable if such Insurance Policy was in effect as required in this Agreement) by the Design-Builder under any Insurance Policy in connection with the termination of this Agreement.
- (b) The Design-Builder must:
- (i) document in detail the costs and expenses claimed under this Article to the DDC's reasonable satisfaction; and
  - (ii) provide the DDC with copies of Subcontractor invoices covering amounts claimed under this Article.
- (c) The DDC's determination of any Termination Without Cause Payment amount will be final, binding, and conclusive.

#### 34.4 **Exclusive Remedy and Waiver**

Payment to the Design-Builder under Section 34.3 (*Termination Without Cause Payments*) constitutes the Design-Builder's sole and exclusive remedy for termination of this Agreement and any outstanding Claims, except unresolved Claims for Extra Work for which the Design-Builder has delivered an Initial Delay Event Notice pursuant to Section 27.2 (Process for Requesting Applicable Relief) prior to the issuance of a Termination Notice by DDC pursuant to Section 34.1 (Right to Terminate Without Cause). Accordingly, upon payment of the termination payment under Section 34.3 (*Termination Without Cause Payments*) or termination of this Agreement under Article 35 (*Design-Builder Default*), the Design-Builder waives all Claims against the DDC with respect to the Work or this Agreement, except as provided in the previous sentence.

#### 34.5 **No Waiver by the DDC**

Termination under this Article will not waive any right or claim to damages that the DDC may have with respect to Work that has achieved Substantial Completion or Final Completion before the date of termination, and the DDC may pursue any cause of action which it may have at law or under this Agreement with respect to the completed Work.

35. **DESIGN-BUILDER DEFAULT**

35.1 **Design-Builder Default**

The occurrence of any one or more of the following will constitute a “**Design-Builder Default**”:

- (a) the Design-Builder Abandons the Project or makes any written repudiation of this Agreement or any of its terms;
- (b) following an Early Warning Trigger under Section 14.2 (*Delays*), where requested by the DDC, the Design-Builder fails to (i) timely provide a Remedial Plan to the DDC or (ii) timely comply with the terms of any such Remedial Plan;
- (c) the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Long Stop Date;
- (d) the Design-Builder fails to pay any amount due to the DDC under this Agreement when due, except to the extent the payment is being reasonably disputed by the Design-Builder, which failure continues for twenty days after written notice of such non-payment;
- (e) the Design-Builder fails, for any reason other than failure of the DDC, to make payments to the Design-Builder when obligated in accordance with this Agreement, to make prompt payments required to be made by the Design-Builder to any Subcontractor that are not in dispute, which failure continues for thirty days after written notice of such non-payment (which notice requirement will be waived if Applicable Law prohibits the giving of such notice);
- (f) any representation or warranty made by the Design-Builder in this Agreement or any certification or instrument delivered to the DDC in accordance with this Agreement that is or was materially false, materially misleading or materially inaccurate when made or which omits material information when made and which causes a material loss. Any schedule, report or other document (except those enumerated in the prior sentence) delivered to the DDC in accordance with this Agreement that is intentionally false, intentionally misleading or intentionally inaccurate when made or intentionally omits material information when made and which causes a material loss;
- (g) the Design-Builder fails to comply in any material respect with any Governmental Approval, Applicable Standard or Applicable Law;
- (h) the Design-Builder fails to promptly comply with any Suspension Order issued by the DDC in accordance with Section 35.4 (*Suspension Orders*);
- (i) the Design-Builder fails to comply with any Safety Compliance Order issued by the DDC in accordance with Article 9 (*Safety and Safety Compliance Order*);
- (j) the Design-Builder fails to allow the DDC, representatives of the Department of Investigation or the Integrity Monitor to inspect the Project Site, the Works and any materials or documents, where required under this Agreement;
- (k) the Design-Builder fails to comply with Article 46 (*Assignment*);

- (l) an Insolvency Event arises with respect to the Design-Builder, any DB Member or any Guarantor, unless:
  - (i) with respect to a DB Member or a Guarantor, the Design-Builder, within thirty days of the relevant Insolvency Event, or within such longer period as agreed with the DDC, so long as the Design-Builder is diligently pursuing such replacement, replaces such DB Member or Guarantor with a reputable counterparty that possesses the technical and financial capability to perform all remaining applicable portion of the Work, reasonably acceptable to the DDC; or
  - (ii) in the absence of replacing such DB Member, the Design-Builder demonstrates to the satisfaction of the DDC that (i) the Design-Builder either possesses the technical and financial capability to perform all remaining Work in accordance with this Agreement or (ii) the Design-Builder demonstrates to the satisfaction of the City that the remaining DB Member or Guarantor, with respect to which a Insolvency Event has not occurred possesses the technical and financial capability to perform all remaining Work in accordance with this Agreement;
- (m) the Design-Builder fails to obtain any Guarantee or Performance Bond or Payment Bond when required under this Agreement or any such Guarantee or Performance Bond or Payment Bond is terminated, or is no longer maintained in full force and effect or the Guarantor is in default under the Guarantee, unless in the case of the Guarantee,
  - (i) the Design-Builder replaces such Guarantor under the terminated Guarantee with a reputable counterparty reasonably acceptable to the DDC that possesses the technical and financial capability to perform all remaining applicable portion of the Work, within thirty days of the termination of such Guarantee, or within such longer period as agreed with the DDC, so long as the Design-Builder is diligently pursuing such replacement; or
  - (ii) in the absence of replacing such Guarantor, the Design-Builder demonstrates to the satisfaction of the DDC that the remaining Guarantor possesses the technical and financial capability to perform all remaining Work in accordance with this Agreement;
- (n) the Design-Builder, at any time, fails to obtain, provide and maintain the Insurance Policies in accordance with the requirements of this Agreement;
- (o) (i) the Design-Builder's aggregate liability for liquidated damages assessed by the DDC under this Agreement exceeds the LD Cap or (ii) the Design-Builder's overall liabilities due to the DDC under this Agreement exceeds the Aggregate Liability Cap;
- (p) a material failure by the Design-Builder or its Subcontractors to cooperate with the Inspector General or the Integrity Monitor;
- (q) if the Design-Builder or any DB Member or their respective officers, directors, partners, five percent or greater shareholders, principals, or other employees or persons substantially involved in the Work are charged, indicted, plead guilty or convicted after execution of this Agreement under any State or federal law of any of the following:
  - (i) a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
  - (ii) fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

- (iii) a criminal violation of any State or federal antitrust law;
  - (iv) violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;
  - (v) conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (iv) above; or
  - (vi) an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor;
- (r) if the Design-Builder or any DB Member or their officers, directors, partners, five percent or greater shareholders, principals, or other employees or persons substantially involved in the Work are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (s) if the Design-Builder or any DB Member or their officers, directors, partners, five percent or greater shareholders, principals, or other employees or persons substantially involved in the Work makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work; or
- (t) without limiting 35.1(a) through (s), the Design-Builder breaches any other material obligation under this Agreement or any Design-Builder Party engages in fraud, criminal conduct, intentional tortious act, recklessness or bad faith in connection with this Agreement.

## 35.2 Notice of Design-Builder Default and Cure Periods

### (a) Notice

The DDC may provide written notice to the Design-Builder and any or all of the Sureties upon the occurrence of a Design-Builder Default (“**Design-Builder Default Notice**”).

### (b) Cure Periods

Upon receipt of a Design-Builder Default Notice, the following cure periods will apply:

- (i) for a Design-Builder Default under Sections 35.1(a) (*Abandonment or Repudiation*), 35.1(b) (*Remedial Plan Default*), 35.1(c) (*Substantial Completion Long Stop Date*), Section 35.1(h) (*Suspension Order*), 35.1(i) (*Safety Order*), 35.1(k) (*Assignment*), 35.1(l) (*Insolvency*), 35.1(m) (*Performance Security*), , Section 35.1(n) (*Insurance*), 35.1(o) (*Liability Cap*) or 35.1(q) (*Criminal Activity*) to 35.1(s) (*Fraudulent Activity*), there is no cure period; or
- (ii) for each other Design-Builder Default, unless otherwise noted in Section 35.1 (*Design-Builder Default*) for any specific Design-Builder Default, a period of ten days after the Design-Builder receives the Design-Builder Default Notice.

### (c) DDC Remedies

If a Design-Builder Default occurs that has no cure period or if it is not cured within the applicable cure period, the DDC may, in its discretion:

- (i) require the Design-Builder to prepare and implement a Remedial Plan in accordance with Section 35.3 (*Remedial Plan for Design-Builder Default or Early Warning Trigger*); or
- (ii) terminate this Agreement in accordance with Section 35.5 (*Termination for Design-Builder Default*).

(d) **Ethical or Criminal Defaults**

For any Design-Builder Default determined to exist by the DDC under Sections 35.1(q) (*Criminal Activity*), Section 35.1(r) (*Antitrust Activity*) and 35.1(s) (*Fraudulent Activity*), the Design-Builder may only rebut or Dispute such Design-Builder Default (which is deemed an Ineligible Dispute for purposes of the Dispute Resolution Clause) as follows:

- (i) the Design-Builder may submit a written request (and supporting documentation) for the DDC to provide the Design-Builder promptly, but no later than ten days from receipt of such notice, an opportunity to be heard as to why the Design-Builder believes that the applicable ethical or criminal Design-Builder Default has not occurred;
- (ii) following such opportunity to be heard (which may not exceed 2 Business Days), the DDC will either confirm, modify or reject its initial determination of the occurrence of the applicable ethical or criminal Design-Builder Default; and
- (iii) with respect to any such determination, the Design-Builder may commence an action in a court of competent jurisdiction sitting in the City and County of New York under Article 78 of the New York Civil Practice Law and Rules.

35.3 **Remedial Plan for Design-Builder Default or Early Warning Trigger**

- (a) Without prejudice to any other right or remedy available to the DDC, if a Design-Builder Default occurs (whether or not any cure period under Section 35.2 (*Notice of Design-Builder Default and Cure Periods*) has expired), the DDC may require the Design-Builder to prepare and submit to the DDC, within any period as the DDC reasonably determines, a plan to remedy or cure the relevant Design-Builder Default (“**Remedial Plan**”).
- (b) Within thirty days of receiving a Remedial Plan, the DDC must notify the Design-Builder as to whether the DDC accepts the Remedial Plan. If the DDC determines that the Remedial Plan is not acceptable, the DDC may terminate this Agreement in accordance with Section 35.5 (*Termination for Design-Builder Default*).
- (c) If the DDC notifies the Design-Builder that its Remedial Plan is acceptable, the Design-Builder must diligently implement the Remedial Plan in accordance with its terms.

35.4 **Suspension Orders**

(a) **Generally**

The DDC may at any time issue a Suspension Order, including following, or in connection with, a Design-Builder Default. Subject to Section 9.2(c), a Suspension Order must be in writing and signed by the DDC Representative (a “**Suspension Order**”).

(b) **Form**

In the case of an Emergency, the DDC may issue a Suspension Order orally. The DDC must confirm any oral Suspension Order in writing within three days of giving the oral order. To the extent that a Suspension Order and a Safety Compliance Order described in Article 9 (*Safety and Safety Compliance Order*) derive from, or are related to, the same event or occurrence, the DDC may issue one combined order including the terms of both such orders.

(c) **Duty to Comply**

Subject to Section 35.4(d) (*Relief*), if the DDC issues a Suspension Order, the Design-Builder must proceed, at its sole cost and expense, to carry out the Suspension Order, as expeditiously as possible. The Design-Builder must undertake Reasonable Efforts to overcome any inability to comply with any Suspension Order caused by a Delay Event.

(d) **Relief**

The DDC's issuance of a Suspension Order will constitute a Compensable Delay Event, except when the DDC issues the Suspension Order in response to, or in connection with any failure of any Design-Builder Party to comply with this Agreement, including in response to or in connection with:

- (i) any conduct of any Design-Builder Party that is disruptive to the efficient functioning of the City Assets, including material interference with traffic or the public or which causes an Emergency; or
- (ii) the existence of conditions unsafe or hazardous for workers, other Project personnel or the general public due to any Design-Builder Party's failure to comply with Safety Standards or perform Safety Compliance as set forth in Article 9 (*Safety and Safety Compliance Orders*).

(e) **Rectification**

Any Suspension Order will cease as notified by the DDC to the Design-Builder in writing.

**35.5 Termination for Design-Builder Default**

If a Design-Builder Default occurs and:

- (a) there is no cure period for that Design-Builder Default under Section 35.2 (*Notice of Design-Builder Default and Cure Periods*);
- (b) the DDC determines that the Design-Builder Default has not been cured within the relevant cure period under Section 35.2 (*Notice of Design-Builder Default and Cure Periods*); or
- (c) if the DDC requires the Design-Builder to deliver a Remedial Plan under Section 35.3 (*Remedial Plan for Design-Builder Default or Early Warning Trigger*), one of the following applies:
  - (i) the Design-Builder fails to deliver the required Remedial Plan within the time required by the DDC, or the DDC rejects any Remedial Plan that is delivered within the required time, in each case in accordance with Section 35.3 (*Remedial Plan for Design-Builder Default or Early Warning Trigger*); or

- (ii) where a Remedial Plan has been accepted by the DDC, the DDC determines that the Design-Builder or its Sureties have failed to comply with the Remedial Plan or cure the Design-Builder Default, in each case in accordance with the schedule provided in that Remedial Plan,

the DDC may by written notice to the Design-Builder terminate this Agreement (“**DDC Termination Notice**”). A DDC Termination Notice must specify the Design-Builder Default that has occurred and the date that this Agreement will terminate.

### 35.6 **Payments on Termination for Design-Builder Default**

- (a) If the DDC terminates this Agreement in accordance with Section 35.5 (*Termination for Design-Builder Default*):
  - (i) the Design-Builder will not be entitled to receive any further payments under this Agreement; and
  - (ii) the Design-Builder must pay the DDC, within thirty days upon demand, an estimated amount equal to the aggregate of:
    - (A) all Losses incurred or estimated to be incurred by the DDC associated with termination of this Agreement and the Design-Builder Default (the “**Estimated DDC Damages**”); and
    - (B) any outstanding liquidated damages or other claims that have accrued up to, and remain unpaid as of, the date of termination of this Agreement.
  - (iii) upon Final Completion, the DDC will calculate its actual Losses incurred due to such termination of this Agreement (the “**DDC Actual Damages**”), and based on such calculation:
    - (A) if the DDC Actual Damages are less than the Estimated DDC Damages, then DDC will return any Estimated DDC Damages received in excess of the DDC Actual Damages; or
    - (B) if the DDC Actual Damages are more than the Estimated DDC Damages, the DDC may issue a demand to the Design-Builder to pay the DDC, within thirty days upon demand, a final amount equal to the DDC Actual Damages not otherwise previously received from the Design-Builder.
- (b) Without limiting the generality of Section 35.6(a)(ii)(A), the DDC’s Losses associated with termination of this Agreement for a Design-Builder Default will include:
  - (i) the DDC’s costs and expenses in completing the Work including:
    - (A) all costs and expenses that the DDC has incurred or will incur in completing all of the Work, less the remaining balance of the Contract Price;
    - (B) all Losses and expenses (including attorney and other advisor fees and expenses) incurred by the DDC in connection with any re-procurement of the Work; and
    - (C) all costs and expenses (including attorney and other advisor fees and expenses) incurred by the DDC defending claims arising from the Design-

Builder's performance or non-performance (including any Claims by the Design-Builder), and

- (ii) subject to Section 14.7 (*Limitation on Liability*), losses that have or will be incurred by the DDC for any reasonable delay or projected delay to the timely achievement of all Guaranteed Completion Dates that remain outstanding on the date of termination of this Agreement.

### 35.7 **Improper Termination for Design-Builder Default**

If it is finally determined, pursuant to Article 41 (*Dispute Resolution Procedure*), that the DDC incorrectly terminated this Agreement for a Design-Builder Default:

- (a) the DDC will be deemed to have terminated this Agreement for convenience under Article 34.3 (*Termination Without Cause*); and
- (b) the Design-Builder's sole relief for such improper termination will be the applicable termination compensation under and in accordance with Section 34.3 (*Termination Without Cause*).

## 36. **DESIGN-BUILDER SUSPENSION RIGHTS**

### 36.1 **Suspension Trigger**

Each of the following will constitute a "**Suspension Trigger**":

- (a) DDC's failure to pay the Design-Builder any undisputed Monthly Payment amount, which failure continues for thirty days after written notice of failure to make such payment has been received by the DDC from the Design-Builder; or
- (b) DDC's failure to pay any other required undisputed amount due and payable to the Design-Builder under this Agreement, which failure continues for thirty days after written notice of failure to make such payment has been received by the DDC from the Design-Builder.

### 36.2 **Suspension Notice**

In order for a Suspension Trigger to occur, the Design-Builder must notify the DDC of the occurrence of any such Suspension Trigger once the applicable cure periods have elapsed ("**Suspension Trigger Notice**").

### 36.3 **Suspension Rights**

- (a) The Design-Builder may suspend its performance of the Work no earlier than thirty days after the Design-Builder delivers to the DDC notice of the Design-Builder's intention to suspend its performance of the Work; provided, that the Suspension Trigger has not been cured by the end of such thirty-day period.
- (b) When the Suspension Trigger has been remedied the Design-Builder must promptly resume performance of the Work and must mitigate any further losses or delay to the Design-Builder. Unless the Design-Builder is entitled to suspend its performance pursuant to this Section, the Design-Builder will not suspend or delay performance of the Work because of any other breach by the DDC that does not constitute a Suspension Trigger. To the extent there is a good faith Dispute concerning any Monthly Payment, the Design-Builder must continue performance of the Work during any such Dispute as provided in Section 24.6 (*Disputes*).

**37. TERMINATION FOR EXTENDED FORCE MAJEURE EVENT**

**37.1 Notice to Continue**

Subject to Section 28.1(d) (*Unable to Agree*), the Design-Builder may request termination of, or the DDC may terminate, this Agreement due to an Extended Force Majeure Event on twenty Business Days' notice. If the Design-Builder gives such notice prior to Final Completion, then the DDC has the option, in its absolute discretion, either to accept such notice or to respond in writing on or before the date falling ten Business Days after the date of its receipt stating that it requires this Agreement to continue until the time the DDC terminates this Agreement. If the DDC gives the Design-Builder such notice to continue the Work under this Agreement, then:

- (a) the Design-Builder must, to the extent reasonably practicable, continue to perform the Work and be entitled to claim such Force Majeure Event as a Compensable Delay Event (to the extent not covered by insurance proceeds) from the day after the date on which this Agreement would have terminated per the Design-Builder's request to terminate, subject to Section 37.1 (*Notice to Continue*); and
- (b) this Agreement will not terminate until expiration of written notice (of at least twenty Business Days) from the DDC to the Design-Builder that it wishes this Agreement to terminate.

**37.2 Termination for Extended Force Majeure Event**

If either the DDC terminates this Agreement for an Extended Force Majeure Event, or the DDC accepts the Design-Builder's termination notice delivered in connection with Section 37.1 (*Notice to Continue*), this Agreement will terminate within ten Business Days following the DDC's notification, or acceptance, of such termination. The DDC will pay for all Work completed by the Design-Builder, including all Retainage Amounts held, subject to submission of a payment request in accordance with Article 24 (*Payment Provisions*). The Design-Builder will comply with all termination obligations under Article 38 (*Design-Builder Termination Obligations*).

**38. DESIGN-BUILDER TERMINATION OBLIGATIONS**

If this Agreement is terminated for any reason by either the DDC or the Design-Builder in accordance with the terms of this Agreement in addition to any other right available at law, the DDC may:

- (i) take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances, completed Work, Subcontracts, Intellectual Property, Work Product, DB Insurance Policies, and other items that have been purchased or provided for the performance of the Work;
- (ii) employ any Person or Persons to complete the Work and provide all of the required labor, services, materials, equipment and other items; and

the Design-Builder must at no cost to the DDC transfer and assign the items referred to in Section 38(i) and comply with all requirements in Section 34.2(a) (*Design-Builder's Obligations Upon Termination*), including assigning all Subcontracts to the DDC as may be requested by the DDC.

**PART I – ADMINISTRATION OF THIS AGREEMENT**

**39. AUTHORIZED REPRESENTATIVES**

**39.1 Authorized Representatives**

- (a) Each of the DDC and the Design-Builder must designate an individual who is authorized to make decisions and bind that Party on matters relating to the Contract Documents (the “**DDC Representative**” and “**Design-Builder Representative**” respectively and together the “**Authorized Representatives**”).
- (b) Exhibit 2 (*Initial Designation of Authorized Representatives*) provides the initial designations of the DDC Representative and Design-Builder Representative.
- (c) Each Party may change its Authorized Representative by a notice delivered to the other Party.

**39.2 Delegates**

An Authorized Representative may, by a notice delivered to the other Party, delegate its authority under Section 39.1 (*Authorized Representatives*) or any other matter to be performed by the Authorized Representative under this Agreement, to another individual or individuals to perform those functions, and make binding decisions with respect to those matters, specified in that notice.

**40. PARTNERING PROVISIONS**

- (a) Prior to escalating a Dispute to Senior Representative Negotiations under Article 41 (*Dispute Resolution Procedures*) below, and where there is any lack of concurrence regarding either Party’s performance or obligations under this Agreement, the Parties must promptly begin discussions between the personnel of each organization at the tier levels and for a period not to exceed the maximum time periods described in the table below (the “**Escalation Resolution Ladder**”):

<b>TIER</b>	<b>DESIGN-BUILDER</b>	<b>DDC</b>	<b>TIME LIMIT*</b>
Tier 1	Construction Manager	Construction Project Manager	Five Business Days
Tier 2	Project Manager	Project Executive	Five Business Days

*\*Time in which Dispute must be resolved or passed on to the next tier*

- (b) The personnel of both organizations may agree to terminate their discussions prior to the expiration of the time periods above and escalate the Dispute to the next tier or to Senior Representative Negotiations, as applicable. The Escalation Resolution Ladder must only be used to achieve consensus on interpretation of the Parties’ obligations or performance under this Agreement (an “**Informal Dispute**”). The Escalation Resolution Ladder must not be used to resolve, and Informal Disputes do not include, disputes that (i) require a Change Order to implement, (ii) principally involve issues that are purely legal in nature, (iii) authorize a deviation from the Project Requirements or any other terms of the Agreement or (iv) authorize any additional compensation to the Design-Builder or extension to any Guaranteed Completion Date. As a result, each of the Disputes identified in (i)-(iv) (“**Formal Disputes**”) will be directly resolved pursuant to the Article 41 (*Dispute Resolution Procedures*).

- (c) The resolution of an Informal Dispute must be agreed to in writing among the Parties. To the extent any Informal Dispute (other than a Fast-Track Dispute which will be resolved pursuant to Section 41.3 (*Fast-Track Dispute*)) is not resolved pursuant to the Escalation Resolution Ladder, the Parties must then seek to resolve such Dispute through Senior Representative Negotiations in Article 41 (*Dispute Resolution Procedures*) below.
- (d) If within thirty days following the expiration or termination of any Informal Dispute resolution under the Escalation Resolution Ladder, a Party fails for any reason to commence engaging in Senior Representative Negotiations or resolving a Fast-Track Dispute in accordance with Section 41.3 (*Fast-Track Dispute*) to resolve such Informal Dispute not otherwise resolved under this Article 40 (*Partnering Provisions*), such Party will be deemed to have irrevocably and forever waived and released any claim or right to damages attributable to such Informal Dispute that such Party may otherwise have been able to claim under this Article 40 (*Partnering Provisions*) or Article 41 (*Dispute Resolution Procedures*).

## 41. DISPUTE RESOLUTION PROCEDURE

### 41.1 General Provisions

All Disputes (excluding Ineligible Disputes) arising out of, or relating to, the Contract Documents, that are not otherwise resolved by the Parties, must be resolved in accordance with this Article 41 (the “**Dispute Resolution Procedure**”).

### 41.2 Senior Representative Negotiations

- (a) **Notification.** Within thirty Business Days of either (i) the date the disputing party is aware, or should have been aware, of a Formal Dispute or (ii) the expiration or termination of any Informal Dispute resolution under the Escalation Resolution Ladder, the disputing Party must notify the other Party of such Dispute (a “**Dispute Notification**”), and the Senior Representatives of the Parties must meet and use all Reasonable Efforts to resolve such Dispute in accordance with this Section 41.2. Such Dispute Notification must be in substantially the form attached in Part C of Exhibit 12 (*Disputes Review Board*).

If, for any reason, a Party fails to deliver a Dispute Notification within the time period required in the above paragraph, such Party will be deemed to have irrevocably and forever waived and released any claim or right to damages attributable to such Dispute that such Party may otherwise have been able to claim under this Article 41 (*Dispute Resolution Procedure*).

- (b) **Response.** Within ten Business Days of receiving the Dispute Notification, the Senior Representative of the Party receiving the Dispute Notification will respond in writing (“**Dispute Notification Response**”) with a notification that must include the following information:
  - (i) an identification of any disputed facts;
  - (ii) references to any relevant provisions from the Contract Documents;
  - (iii) a proposed resolution of the Dispute; and
  - (iv) any other information the responding Party considers relevant.
- (c) **Commencement.** The Senior Representative Negotiations must commence within seven Business Days of receipt of the Dispute Notification Response by the disputing Party and such Senior Representative Negotiations will not exceed thirty Business Days (or such

longer period agreed by the Parties) commencing from the date of Senior Representative Negotiations commencement. Failure of a Party to submit its Dispute Notification Response within the time period set forth in clause (b) above, or to commence and engage in Senior Representative Negotiations in accordance with this Section 41.2, until such Dispute Notification Response is provided, will result in a waiver of such Party's right to participate in (i) any Senior Representative Negotiations or (ii) any subsequent Disputes Review Board.

- (d) **Rules.** To the extent a Dispute is not resolved within fifteen Business Days of commencement of the Senior Representative Negotiations, either Party may then request an independent mediator be appointed in accordance with the Rules (as defined below) to assist with mediating the Agreement's administration with regards to the Dispute at issue. The Parties will appoint such mediator no later than ten Business Days following receipt of such request for a mediator (unless the Parties agree to a longer period). The thirty Business Day time limit for Senior Representative Negotiations will be tolled for a maximum period of ten days from the time a Party requests an independent mediator to the time an independent mediator is appointed. Once an independent mediator is appointed, the Parties will utilize the subsequent fifteen Business Days to resolve the Dispute in accordance with engagement rules and procedures governed by the American Arbitration Association's Construction Industry Rules for Mediation in effect as of the date of the relevant Dispute Notification (the "**Rules**"). Any costs associated with such mediator will be split equally among the Parties.
- (e) **Confidentiality.** Statements, materials and information prepared for, made or presented at, or otherwise derived from Senior Representative Negotiations (including any meeting of the Senior Representatives) are confidential and may not be used as evidence in any proceedings or the Disputes Review Board. However, generic materials or information that are not bespoke to the Senior Representative Negotiations may be re-submitted as part of any evidence considered by the Disputes Review Board or any subsequent litigation.
- (f) **Resolution.** If the Senior Representative Negotiations resolve the Dispute, the Parties must promptly (but no later than five Business Days following resolution) record such agreement in a writing signed by the Senior Representatives.

### 41.3 Fast Track Dispute

- (a) If either Party provides a Dispute Notification that includes a Fast-Track Dispute (a "**Fast-Track Dispute Notification**"), and the non-disputing Party agrees within three Business Days of its receipt, that a Fast-Track Dispute exists, then such Fast-Track Dispute may then (at the disputing Party's option) bypass Senior Representative Negotiations and be directly submitted to the Disputes Review Board for a hearing and their determination in accordance with Section 41.4 (*Disputes Review Board*).
- (b) **Rejection Notice.** If upon receipt of a Fast-Track Dispute Notification, the non-disputing Party disagrees, within three Business Days of its receipt of such notification, that a Fast-Track Dispute exists (the "**Disagreeing Party**"), such Party must submit (within five Business days of its notification of disagreement) an equivalent notice to the Dispute Notification Response explaining its justification (a "**Fast-Track Dispute Rejection Notice**") simultaneously to the disputing Party and the Disputes Review Board. Failure to respond to a Fast-Track Dispute Notification within three Business Days of the non-disputing Party's receipt, will be deemed a concurrence by the non-disputing Party for purposes of this Section 41.3.
- (c) **Notice to DRB.** Within two Business Days of the disputing Party's receipt of a Fast-Track Dispute Rejection Notice, both the Fast-Track Dispute Notification and the Fast-Track Dispute Rejection Notice must be submitted to the Disputes Review Board for its review

and consideration. The Disputes Review Board will issue a determination within five Business Days of its receipt of both notifications on whether such Dispute is a Fast-Track Dispute. Such Fast-Track Dispute determination will be final and binding for purposes of commencing a Disputes Review Board process under Section 41.4 (*Disputes Review Board*) below. If the Disputes Review Board determines such Dispute to be a Fast-Track Dispute, then the process set out in Section 41.4 (*Disputes Review Board*) will immediately apply.

#### 41.4 Disputes Review Board

- (a) **Dispute Statement.** Within seven Business Days of either (1) the Parties being unable to reach agreement on a Dispute pursuant to Section 41.2 (*Senior Representative Negotiations*), (2) a Fast-Track Dispute having been agreed by the Parties or determined to exist by the Disputes Review Board under Section 41.3 (*Fast-Track Dispute*) or (3) either Party seeking reconsideration of the Disputes Review Board's recommendation in accordance with Section 41.4(h)(ii) below, then in each case, the Parties must each submit a description of their position with respect to the Dispute to the Disputes Review Board for its review and consideration providing an equivalent level of detail as the Dispute Notification (the "**Dispute Statement**"). Failure of a Party to submit its Dispute Statement within the time period set forth in this clause (a) may result in a waiver of its right to submit a Dispute Statement and participate in the Disputes Review Board with respect to the Dispute at hand, at the discretion of the Disputes Review Board.
- (b) **Administrative Procedures.** The authority and administrative procedures with respect to constituting the Disputes Review Board are set forth in Part B of Exhibit 12 (*Disputes Review Board*).
- (c) **Hearing Date.**
  - (i) Upon each Party's submission of its respective Dispute Statement to the Disputes Review Board, the Disputes Review Board will decide when to conduct the hearing; provided, that the Disputes Review Board must hold the hearing within fifteen Business Days of receipt of both Dispute Statements, unless the Parties mutually agree to a longer time period.
  - (ii) Any Fast-Track Dispute must be heard within seven Business Days of receipt of both Dispute Statements.
- (d) **Discovery.** Each Party may voluntarily furnish written evidence or documentation to the Disputes Review Board regarding the applicable Dispute in the time period required by the Disputes Review Board. If either Party intends to furnish such information to the Disputes Review Board, it must provide copies of such information to the other Party reasonably in advance of the scheduled hearing date and concurrently with providing it to the Disputes Review Board. If the Disputes Review Board requests any additional documentation or evidence prior to, during, or after the hearing, the relevant Party will provide the requested information to the Disputes Review Board and to the other Party, in accordance with the deadlines set by the Disputes Review Board.
- (e) **Hearing.** The Design-Builder and the DDC will each be afforded a reasonable opportunity to be heard by the Disputes Review Board and to offer evidence, but in no event will the time for hearings exceed sixty consecutive days from the notice of hearing commencement issued by the Disputes Review Board, without the consent of both Parties. Neither the DDC nor the Design-Builder may present information at the hearing that was not previously distributed to the Disputes Review Board and the other Party. A court-reporter may be requested by either Party for any Disputes Review Board hearing. In all Disputes pertaining

to a Design-Builder Default, there will be a transcript prepared by a court-reporter to document the hearing for the record.

- (f) **Advisory Opinion.** Prior to commencing a hearing (including during Senior Representative Negotiations), based solely on the facts presented and other information otherwise made available to the Disputes Review Board, either Party may seek a declaratory judgment in the form of an advisory opinion of the Disputes Review Board, which determines the rights of the parties, without any hearing and without ordering anything be done or awarding any damages or extensions to performance. The Parties may use such advisory opinion to reach a pre-Disputes Review Board determination settlement.
- (g) **Decision.** The Disputes Review Board's recommendations for resolution of the Dispute will be given in writing to both the DDC and the Design-Builder within fifteen Business Days after completion of the hearing. The Disputes Review Board's recommendation must be made with a majority vote of the Board Members. In cases of substantial complexity, both Parties may agree to allow additional time for the Disputes Review Board to formulate its recommendations.
- (h) **Acceptance.** Within fifteen Business Days of receiving the Disputes Review Board's recommendations, both the DDC and the Design-Builder will respond to the other and to the Disputes Review Board in writing, signifying either acceptance or rejection of the Disputes Review Board's recommendations. The failure of either Party to respond within the fifteen-Business Day period will be deemed an acceptance of the Disputes Review Board's recommendations by that Party.
  - (i) The recommendations of the Disputes Review Board will be final and binding only to the extent the Parties accept such recommendations, either expressly or to the extent deemed accepted by virtue of that Party's failure to respond within the fifteen-Business Day period. If the Parties accept (or are deemed to have accepted) any recommendation of the Disputes Review Board in accordance with this Article 41, each Party must (unless otherwise specified in the relevant recommendation) give effect to such recommendation as soon as is reasonably practicable.
  - (ii) To the extent any Disputes Review Board recommendation is accepted by both Parties and such recommendation requires a Change Order, then such Change Order must be agreed between the Parties in accordance with Section 26.5 (*Change Order*).
  - (iii) Should the Dispute remain unresolved, either Party within thirty days of receiving the Disputes Review Board's recommendation, may seek reconsideration of the decision by the Disputes Review Board only when there is material and relevant new evidence (not otherwise discoverable prior to any Disputes Review Board's decision) to present, and the Disputes Review Board must give such Party a reasonable opportunity to present such new facts for consideration. Any Party seeking reconsideration must provide written notice to the other Party as soon as practicable, but no later than thirty days of receiving the Disputes Review Board's recommendation.
- (i) **Design-Builder Default.** Notwithstanding anything to the contrary and subject to Section 35.2(d) (*Ethical or Criminal Defaults*), the DDC's decision to exercise its right to terminate the Design-Build Agreement due to a Design-Builder Default will only be subject to further review (i) following the DDC's decision to accept a Disputes Review Board's decision upholding DDC's exercise of such rights and (ii) in a court of competent jurisdiction sitting in the City and County of New York under Article 78 of the New York Civil Practice Law

and Rules. Any statute of limitations will commence from the DDC's decision to accept or reject the Disputes Review Board's opinion in connection with any such Dispute regarding a Design-Build Default, or if DDC neither accepts nor denies the decision, upon the date the decision is deemed accepted under this Section 41.4(i)(ii). The Disputes Review Board must not consider, and the Parties must not submit, any determination or recommendation by any arbitrator under the Performance Bond as evidence of whether a Design-Builder Default has occurred under this Agreement.

#### 41.5 **Conduct During a Dispute**

During any Dispute and throughout the Dispute Resolution Procedures:

- (a) the Design-Builder must continue with all Work (including Work that is the subject of the Dispute) in a diligent manner and without delay in accordance with (and subject to) all applicable provisions of the Contract Documents and must use Reasonable Efforts to mitigate any delay to the Project or any losses that may be incurred by the Parties; and
- (b) the Parties must continue to comply with all provisions of the Contract Documents (including payment of any amounts not in dispute that are payable under the Contract Documents).

#### 41.6 **Joinder**

The Disputes Review Board may, or at the request of any party to the Dispute, will compel the participation of any of the Design-Builder's Subcontractors or Other Contractor with a contract related to the Work under this Agreement, and that Subcontractor or Other Contractor will be bound by the decision of the Disputes Review Board to the extent provided under this Agreement. Any Other Contractor or Subcontractor thus brought into the Dispute resolution proceeding will have the same rights and obligations under this Article 41 as the Design-Builder.

#### 41.7 **Record Keeping**

If the Design-Builder fails to strictly comply with any notice provisions (including timing requirements with respect to a Fast-Track Dispute, Dispute Notification, Dispute Notification Response or Dispute Statement) or recordkeeping provisions of this Agreement, any claim of the Design-Builder with respect to such records or notice will be deemed waived, and the DDC will not have to show prejudice to its interest before such denial is made.

#### 41.8 **Venue and Seat**

The venue for the Disputes Review Board will be in New York, New York, at a neutrally-designated location, as agreed upon by the members of the Disputes Review Board.

#### 41.9 **Governing Law**

This Article 41 (*Dispute Resolution Procedure*), and the proceedings under this Agreement, will be governed by the laws of the State of New York, without regard to provisions governing conflicts of law principles.

#### 41.10 **Judicial Remedies**

- (a) **Litigation.** If either (i) the Parties are unable to reach agreement on a Dispute following a Disputes Review Board's decision pursuant to Section 41.4(g) (*Decision*) or (ii) in the case of any Ineligible Dispute, then in each case, either Party may file a plenary action for such Dispute in a court of competent jurisdiction sitting in the City and County of New York

within ninety days of the occurrence of either of the following (as applicable): (A) any recommendation of the Disputes Review Board under Section 41.4(g) (*Decision*) or (B) the earlier of either the date in which the disputing Party (1) has discovered or determined the existence of such Ineligible Dispute or (2) should have, reasonably discovered or determined the existence of such Ineligible Dispute. Except for Ineligible Disputes, no litigation or claim may be brought by either Party concerning any Dispute prior to using the procedures described in this Article 41. Failure of a Party to file an action within the ninety-day period in this clause (a) will result in an irrevocable waiver of such Party's right to file a claim with respect to the relevant Dispute.

- (b) **Jurisdiction.** Subject to first satisfying the terms of this Article 41, each Party irrevocably submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in the City and County of New York, and any appellate court thereof, for the settlement of any Dispute. The New York courts are the most appropriate and convenient courts to settle any such Dispute and each of the Parties to this Agreement waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- (c) **JURY WAIVER.** EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH ANY DISPUTE. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

#### 41.11 **Claims and Actions**

- (a) Any Ineligible Dispute that is not subject to dispute resolution under this Article will not be made or asserted in any action, unless the Design-Builder will have strictly complied with all requirements of this Agreement relating to the giving of notice and of information with respect to such claims.
- (b) No action will be instituted or maintained on any Claim that is not subject to dispute resolution under this Article 41 unless such action is commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever occurs first.

### 42. **RECORDS AND AUDIT**

#### 42.1 **Maintenance of Records**

The Design-Builder must:

- (a) in accordance with Best Management Practice, keep and maintain separate and accurate books, records, documents, and other evidence and utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement or that otherwise relate to the Project, the Project Site or the Work (including copies of all original documents delivered to the DDC) at a Project Office or, where no Project Office exists or with the DDC's written approval, any other location (the "**B&R Site**");
- (b) ensure the DDC knows where these books, records and documents are kept at all times;
- (c) make all of its books, records and documents available for inspection by the City, State, and federal auditors and any other person duly authorized by the City at the B&R Site or the Design-Builder's offices at all times during normal business hours;

- (d) provide copies of its books, records and documents to the DDC as and when reasonably requested by the DDC;
- (e) retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 42.1(a), for six years after the completion or termination of this Agreement, or for such longer period required by this Agreement or prescribed by Applicable Law. In addition, if any litigation, claim, audit or Dispute, including those being processed or actions brought under the Dispute Resolution Procedures, concerning this Agreement has commenced before the expiration of such period, the books, records, documents, and other evidence must be retained and made available to the DDC until the completion of such litigation, claim, audit or Dispute, subject to exemptions under Applicable Law. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” The Design-Builder agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

#### 42.2 Audits

- (a) In addition to any other specific audit rights that the DDC has under this Agreement, the DDC and the City Comptroller may review and audit the Design-Builder, its Subcontractors and their respective books, records and documents as the DDC or City Comptroller deems necessary.
- (b) The DDC’s audit rights extend to and include:
  - (i) the right to observe the business operations of the Design-Builder and its Subcontractors; and
  - (ii) calculations undertaken, and financial or business reports provided, by or on behalf of the Design-Builder in accordance with this Agreement.
- (c) The Design-Builder must:
  - (i) certify the completeness and accuracy in all material respects of all information it or its agents provide in connection with any audit by the DDC or other Governmental Entity;
  - (ii) use Reasonable Efforts to cause all Subcontractors to certify to the completeness and accuracy in all material respects of all information the Subcontractors provide in connection with any audit;
  - (iii) include appropriate terms in each Subcontract requiring the Subcontractor to provide the DDC with access and audit rights in accordance with the terms of this Article 41.11; and
  - (iv) include in its Project Management and Execution Plan:
    - (A) internal procedures to facilitate the DDC’s reviews and audits; and

(B) quality and compliance auditing responsibilities.

**42.3 No Removal from Premises.**

Where performance of this Agreement involves use by any Design-Builder Party of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, such Design-Builder Party will not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the City's designated official. Upon the request by the DDC at any time during this Agreement or after the Agreement has expired or terminated, the Design-Builder will return to the DDC any City records, documents, or data that has been removed from City premises.

**42.4 Electronic Records.**

As used in this Agreement, the terms "books," "records," "documents," and "other evidence" refer to electronic versions as well as hard copy versions, subject to Section 42.1(e).

**43. NOTICES AND COMMUNICATIONS**

(a) Unless otherwise expressly provided in this Agreement, all notices, directions, requests, consents and approvals required to be given to or by either Party under this Agreement must be in writing and:

- (i) delivered personally to the Party's duly designated officer or representative;
- (ii) delivered to the office of the Party's duly designated officer or representative during regular business hours; or
- (iii) sent to the Party's duly designated officer or representative by certified or registered mail or a recognized overnight mail or courier service, with delivery receipt requested.

(b) All notices, correspondence and other communication to the Design-Builder must be delivered to the following address or as otherwise directed by the Design-Builder Representative:

Hunter Roberts Construction Group, LLC  
55 Water Street  
New York, NY 10041  
Attn: James C. McKenna  
Telephone: 212-321-6800  
Email: [jmckenna@hrcg.com](mailto:jmckenna@hrcg.com)

Copy to:

Hunter Roberts Construction Group, LLC  
55 Water Street  
New York, NY 10041  
Attn: Lisa Howlett  
Email: [lhowlett@hrcg.com](mailto:lhowlett@hrcg.com)

(c) All notices, correspondence and other communications to the DDC must be marked as regarding the Project and must be delivered to the following addresses or as otherwise directed by the DDC Representative:

NYC Dept. of Design and Construction  
3030 Thomson Avenue  
Long Island City, NY 11101  
Attn: Ali Azad, Project Executive  
Telephone: 718-391-1108/917-731-6659  
Email: [azada@ddc.nyc.gov](mailto:azada@ddc.nyc.gov)

CC Via E-Mail:

Kaushik Patel at [patelk4@ddc.nyc.gov](mailto:patelk4@ddc.nyc.gov) and others as identified and set forth in the NTP 1 or later notice.

- (d) Any notice to the DDC invoking the Dispute Resolution Procedure must also be copied to:

NYC Dept. of Design and Construction  
3030 Thomson Avenue  
Long Island City, NY 11101  
Attn: General Counsel's Office  
Telephone: 718-391-2030  
Email: [DisputeResolution@ddc.nyc.gov](mailto:DisputeResolution@ddc.nyc.gov)

and

NYC Dept. of Design and Construction  
3030 Thomson Avenue  
Long Island City, NY 11101  
Attn: Rebecca Clough, Associate Commissioner  
Telephone: 718-391-1127  
Email: [clough@ddc.nyc.gov](mailto:clough@ddc.nyc.gov)

- (e) Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or, when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. If mailed, notices will be deemed effective and served as of the date of the return of verification of delivery of certified or registered mailing of the notice, or 1 day after deposit with a recognized express overnight mail or courier service.
- (f) Nothing in this Section will be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Applicable Law, including the New York Civil Practice Law and Rules.

## **PART J – MISCELLANEOUS**

### **44. GENERAL REPRESENTATIONS AND WARRANTIES**

#### **44.1 Design-Builder Representations and Warranties**

The Design-Builder represents and warrants that:

(a) **Existence, Good Standing and Qualification**

(i) The Design-Builder is:

(A) a limited liability company existing under the laws of Delaware; and

(B) duly qualified and in good standing to do business in the State of New York and will remain in good standing for as long as it has any obligations under the Contract Documents.

(ii) The DB Members are:

(A) duly organized, validly existing and in good standing under the laws of their state of organization; and

(B) duly qualified and in good standing to do business in the State of New York and will remain in good standing for as long as they have any obligations under the Contract Documents.

(b) **Power and Authority**

The Design-Builder and, if applicable, the DB Members have the power and authority to execute, deliver and perform their respective obligations under this Agreement and the other Contract Documents.

(c) **Authorization**

(i) The Design-Builder and each DB Member has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of their obligations under, this Agreement and the other Contract Documents.

(ii) Each Person executing this Agreement and the other Contract Documents on behalf of the Design-Builder and, if applicable, each DB Member has been (or at the time of execution will be) duly authorized to execute and deliver each document on behalf of the Design-Builder or DB Member, as applicable.

(d) **Execution**

This Agreement and each other Contract Document has been (or will be) duly executed and delivered by the Design-Builder and, as applicable, the DB Members.

(e) **Enforceability**

This Agreement and each other Contract Document constitutes (or at the time of execution and delivery will constitute) a legal, valid and binding obligation of the Design-Builder and each DB Member executing this Agreement, as applicable, enforceable against each of them, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) **No Contravention**

The execution, delivery and performance by the Design-Builder of this Agreement and the other Contract Documents does not (and at the time of execution will not) conflict with or result in a default under or a violation of:

(i) the constituent or organizational documents of the Design-Builder and any DB Member executing this Agreement;

(ii) any other material agreement or instrument to which the Design-Builder or any DB Member executing this Agreement is a party or that is binding on the Design-

Builder or any DB Member executing this Agreement or any of their respective assets; or

- (iii) any Applicable Law or Applicable Standard.

(g) **No Litigation**

- (i) There is no action, suit, proceeding, investigation or litigation pending or served on the Design-Builder or any DB Member to the Design-Builder's knowledge, that:
  - (A) could reasonably be expected to have a material adverse effect on the ability of the Design-Builder, any DB Member or any Guarantor to perform its obligations under this Agreement or any other Contract Document;
  - (B) challenges either the Design-Builder's, any DB Member's or any Guarantor's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or any other Contract Document; or
  - (C) challenges the DDC or the Design-Builder's, any DB Member's or any Guarantor's representative executing this Agreement or any other Contract Document.
- (ii) The Design-Builder, each DB Member and any Guarantor have disclosed to the DDC any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to the matters referred to in Section 44.1(g)(i) that the Design-Builder, each DB Member or the Guarantor is aware of.

(h) **True and Accurate**

- (i) All written information and certifications:
  - (A) provided by or on behalf of the Design-Builder to the DDC, or any of its representatives or advisors, as part of or in connection with the Design-Builder Commitments and the negotiation of this Agreement or the other Contract Documents; or
  - (B) delivered by or on behalf of the Design-Builder to the DDC or any Person on its behalf in accordance with this Agreement or the other Contract Documents,

were true and accurate in all material respects when given and are true and accurate on the date on which this representation is made or repeated.

- (ii) There are no other facts or matters where their omission makes any statement or information contained in the written information provided to the DDC or to any of its representatives or advisors misleading in any material respect as of the relevant date of delivery or the date that this representation is made or repeated.
- (iii) All opinions expressed and contained in the written information provided to the DDC or to any of its representatives or advisors were honestly made on reasonable grounds after due and careful inquiry.

(i) **Licenses, Skill and Expertise**

Each Design-Builder Party has all required authority, license status, professional ability, skills and capacity to perform the Work that it will perform and any professional services included in the Work that are regulated by articles 145, 147 and 148 of the State education law are performed and stamped and sealed, where appropriate, by a professional licensed in accordance with the appropriate articles.

(j) **Passage of Time or Default under this Agreement**

To the best of the Design-Builder's knowledge after diligent inquiry, no event has occurred that with the passage of time or the giving of notice will constitute:

- (i) An event that the Design-Builder may assert any Claim or seek any relief under this Agreement; or
- (ii) A Design-Builder Default under this Agreement.

(k) **Procurement of Agreement**

With respect to securing or soliciting the Agreement, the Design-Builder is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Design-Builder makes such representation and warranty to induce the DDC to enter into the Agreement and the DDC relies upon such representation and warranty in the execution of the Agreement. Upon any breach or violation of the representation and warranty set forth in this Section, the DDC will have the right to annul this Agreement without liability, entitling the DDC to recover all monies paid to the Design-Builder; and the Design-Builder will not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the DDC provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Applicable Law or under this Agreement.

(l) **Conflicts of Interest**

- (i) Neither the Design-Builder, nor any of its directors, officers, members, partners or employees, has any interest nor will they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement; and
- (ii) No person having such interest or possible interest will be employed by or connected with the Design-Builder in the performance of this Agreement.

(m) **Certification Relating to Fair Practices**

Together with each person signing on its behalf, under penalties of perjury, that to the best of its, each such person's knowledge and belief:

- (i) The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;
- (ii) Unless otherwise required by Applicable Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in the Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Design-Builder have not been knowingly disclosed by the Design-Builder, directly or

indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

- (iii) No attempt has been made or will be made by the Design-Builder to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

The fact that the Design-Builder (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices or, or both, terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 44.1(m).

**(n) Disclosures Relating to Vendor Responsibility.**

That it has duly executed and filed all disclosures as applicable, in accordance with Administrative Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Design-Builder acknowledges that the DDC's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Design-Builder represents and warrants that the information it and its principals have provided is accurate and complete.

**(o) Guarantor Financial Conditions**

If a Guarantee is required under this Agreement, within three months of the expiration of each Guarantor's applicable fiscal year, the Design-Builder must provide annual audited financial statements for each Guarantor to DDC. To the extent any such audited financial statements indicate, in DDC's reasonable assessment, a material adverse decline in the Guarantor's ability to support its obligations under the Guarantee, the Design-Builder may be required, as reasonably requested by DDC, to (i) replace the Guarantor with an alternative financially capable entity or (ii) provide additional performance security for the benefit of the City, or (iii) both, where necessary.

**(p) Disclosure Relating to Bankruptcy and Reorganization.**

If the Design-Builder files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Design-Builder will disclose such action to the DDC within seven days of filing.

**45. CONFIDENTIALITY AND PUBLIC DISCLOSURE**

**45.1 Confidentiality**

- (a) Unless otherwise required by the City, the Design-Builder agrees to hold confidential, both during and after the completion or termination of the Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Parties under the Agreement. The Design-Builder agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Design-Builder uses to preserve the confidentiality of its own confidential information. The Design-Builder agrees that such reports, information, or data will not be made available to any person or entity without the prior written approval of the DDC. The obligation under this Section 45.1 to hold reports, information or data confidential will not apply where the Design-Builder is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("**Disclosure Demand**"), provided that the Design-Builder complies with the following: (1) the Design-Builder will provide advance notice to the DDC, in writing or by e-mail, that it received a

disclosure demand to disclose such reports, information or data and (2) if requested by the DDC, the Design-Builder must not disclose such reports, information, or data until the DDC has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence will not apply if the Design-Builder is prohibited by Applicable Law from disclosing to the DDC the disclosure demand for such reports, information or data.

- (b) The Design-Builder will provide notice to the DDC within three days of the discovery of any breach of security, as defined in Administrative Code § 10-501(b), of any data, encrypted or otherwise, in use by the Design-Builder that contains social security numbers or other personal identifying information as defined in Administrative Code § 10-501 (“**Personal Identifying Information**”), where such breach of security arises out of the acts or omissions of the Design-Builder or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Design-Builder will take reasonable steps to remediate the cause or causes of such breach and will provide notice to the DDC of such steps. In the event of such breach of security, without limiting any other right of the DDC, the DDC will have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications or other actions, or both mandated by any Applicable Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure.
- (c) Each Party will restrict access to confidential information to persons who have a legitimate work-related purpose to access such information. Each Party agrees that it will instruct its officers, employees, Subcontractors and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.
- (d) The Design-Builder, and its officers, employees, and agents will notify the DDC, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Design-Builder may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 45.1.
- (e) The Design-Builder agrees to, at the request of the DDC, return to the DDC any and all confidential information in its possession, including, any Design-Builder Party. If either Party is legally required to retain any confidential information, such Party will notify the other Party in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. Each Party agrees to confer with the other Party, in good faith, regarding any issues that arise from such Party’s retaining such confidential information. If the Design-Builder is retaining such confidential information and if Applicable Law does not require otherwise, such information will be maintained, in accordance with the requirements set forth in this Agreement.
- (f) The Design-Builder:
  - (i) acknowledges that the City is subject to the Freedom of Information Law; and
  - (ii) agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in the City’s possession relating to the Project and this Agreement, including materials submitted by the Design-Builder to the DDC, are subject to the Freedom of Information Law.

- (g) To the extent the Design-Builder believes any information or material submitted to the City is exempt from disclosure under the Freedom of Information Law, the Design-Builder may mark the information or materials as "Confidential" and accompany the information or materials with a concise statement of the reasons why it believes the information or material is exempt from disclosure.
- (h) Notwithstanding anything to the contrary, if the DDC receives a request for public disclosure under the Freedom of Information Law of information or material marked "Confidential", the DDC will:
  - (i) notify the Design-Builder of the request; and
  - (ii) give the Design-Builder a reasonable opportunity to assert, in writing, the reasons (if any) why it believes the DDC is not required to disclose any information or material in accordance with the Freedom of Information Law.
- (i) A breach of clauses (a) – (e) of this Section 45.1 will constitute a material breach of the Agreement for which the DDC may terminate the Agreement pursuant to Section 35.5 (*Termination for Design-Builder Default*). The DDC reserves any and all other rights and remedies in the event of unauthorized disclosure.

46. **ASSIGNMENT**

- (a) Neither Party will have the right, power or authority to assign or otherwise Transfer the Contract Documents or any portion of them, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other Party, which consent may be granted or withheld in the absolute discretion of the other Party, except that the DDC may, without the Design-Builder's consent, assign all or any portion of its rights, title and interests in and to the Contract Documents, the Project or the Project Site to any Governmental Entity.
- (b) Nothing in this Article 46 will preclude the Design-Builder from subcontracting portions of the Work in accordance with this Agreement.
- (c) Without limiting Section 46(a), the Design-Builder and each DB Member must not and the Design-Builder will cause each DB Member and Guarantor to not, without DDC's express prior written consent (acting reasonably):
  - (i) dispose of all or any material portion of the Design-Builder's, a DB Member's or a Guarantor's assets;
  - (ii) cause or effectuate any Change in Control;
  - (iii) make or attempt to make, or suffer a voluntary or involuntary, assignment or Transfer of all or any portion of the Design-Builder's and each DB Member's contractual or economic interest in this Agreement (collectively, (i)-(iii), a "**Restricted Transfer**").
- (d) The Design-Builder must provide written notification to DDC of its, or any DB Member's, intent to effectuate or implement a Restricted Transfer.
- (e) Notwithstanding Section 46(c), DDC will promptly approve, in its reasonable discretion, any Restricted Transfer that:

- (i) will not have a material adverse effect on the Design-Builder's or any Design-Builder Party's ability to duly perform their obligations under this Agreement or any Subcontract; and
  - (ii) as applicable, the ultimate parent company of the transferee that caused an Equity Transfer that triggered either (i) a Change in Control or (ii) any other Restricted Transfer (A) is, of equal or better credit quality than the applicable Guarantor for the applicable DB Member prior to the Change in Control or other Restricted Transfer, and (B) enters into a new guarantee (on substantially the same terms as the existing Guarantee) with respect to the obligations of the applicable DB Member.
- (f) In addition, the Design-Builder and each DB Member must not change their legal form without the prior written approval of the DDC. Any changes made without the DDC's approval will be deemed a Restricted Transfer for the purposes of this Article 46.
- (g) Any Transfer made in violation of this Article 46 will be null and void ab initio and of no force and effect.
- (h) The Design-Builder and each DB Member must promptly notify the DDC of any change to its name.

#### 47. **AMENDMENTS AND WAIVERS**

##### 47.1 **Amendments**

This Agreement can only be amended or replaced by a written instrument duly executed by all of the Parties.

##### 47.2 **Waiver**

- (a) No waiver of any term, covenant or condition of this Agreement will be valid unless in writing and signed by the party to which an obligation is owed.
- (b) The DDC's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way limit or waive the DDC's right to subsequently enforce or compel strict compliance with every term, covenant, condition or other provision of this Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of the waivers).
- (c) If the Parties make and implement any interpretation of this Agreement without documenting their interpretation by an instrument in writing signed by all the Parties, the interpretation and implementation will not be binding in the event of any future Disputes.

#### 48. **GOVERNING LAW**

This Agreement will be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and will be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

49. **NON-LIABILITY OF CITY REPRESENTATIVES**

No official, employee, agent or representative of the City will be charged with any liability or held personally liable under any term or provision of this Agreement, or because of any of their acts or omissions or because of the execution or attempted execution of this Agreement, or because of any breach or attempted or alleged breach of any provision of this Agreement.

50. **OTHER**

50.1 **Independent Contractor; No Agent, Joint Venture or Partnership**

- (a) The Design-Builder is an independent contractor, and nothing contained in this Agreement will be construed as constituting any relationship with the DDC other than that of an independent contractor.
- (b) Nothing in this Agreement is intended or will be construed to create any partnership, joint venture, agency, landlord-tenant, lessor-lessee of real property, optionor-optionee, vendor-purchaser, mortgagor-mortgagee or similar relationship between the DDC and the Design-Builder;
- (c) In no event will either Party take a position in any tax return, insurance application or questionnaire, financial statement, financial report, regulatory filing, securities filing, loan document, or other writing of any kind that any of these relationships exists.
- (d) In no event will the relationship between the DDC and the Design-Builder be construed as creating any relationship whatsoever between the DDC and the Design-Builder's employees.
- (e) All persons who are employed by the Design-Builder and all the Design-Builder's Subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the DDC nor under contract with the DDC. The Design-Builder, and not the DDC, is responsible for their work, direction, compensation, and personal conduct while the Design-Builder is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, will create any relationship between the DDC and the Design-Builder's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the DDC (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Design-Builder, its employees or agents, its subcontractors, or its Subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the DDC or to any officer, agent, or employee of the Design-Builder or any other entity (including without limitation, workers' compensation coverage, employers' liability coverage, disability benefits coverage, unemployment insurance benefits, social security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Design-Builder and its employees, officers, and agents will not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the DDC, including any department, agency, office, or unit of the DDC, or (ii) make or support in any way on behalf of or for the benefit of the Design-Builder, its employees, officers, or agents any demand, application, or claim upon or against the DDC for any right or benefit applicable to an official or employee of the DDC or to any officer, agent, or employee of the Design-Builder or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and

no performance pursuant to or in connection with the Agreement will impose any liability or duty on the DDC to any person or entity whatsoever.

- (f) Except as otherwise expressly provided in this Agreement, the Design-Builder has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Design-Builder or any Subcontractor hires to perform or assist in performing the Work.

## 50.2 Conflicts of Interest

- (a) Consistent with City Charter § 2604 and other related provisions of the City Charter, the Administrative Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the treasury of the City, will participate in any decision relating to this Agreement which affects such individual's personal interest or the interest of any corporation, partnership or other entity in which they are, directly or indirectly, interested; nor will any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 50.2 will not prevent directors, officers, members, partners, or employees of the Design-Builder from participating in decisions relating to the Agreement where their sole personal interest is in the Design-Builder.
- (b) The Design-Builder will not employ a person or permit a person to serve as a member of the board of directors or as an officer of the Design-Builder if such employment or service would violate Chapter 68 of the City Charter.

## 50.3 Successors and Assigns

This Agreement is binding upon and will inure to the benefit of the DDC and the Design-Builder and their respective successors and permitted assigns.

## 50.4 Survival

Notwithstanding any other provision of this Agreement, this Section and the following provisions will survive the expiration or any earlier termination of this Agreement:

- (a) Article 31 (*Consequential Loss*),
- (b) Article 32 (*Indemnity from the Design-Builder*);
- (c) Article 41 (*Dispute Resolution Procedure*);
- (d) Article 44 (*General Representations and Warranties*);
- (e) Article 45 (*Confidentiality and Public Disclosure*);
- (f) Article 50 (*Other*);
- (g) the express obligations of the Parties following the termination date; any obligations to pay amounts under this Agreement; and
- (h) all other provisions which by their inherent character should survive termination of this Agreement or completion of the Work will survive the termination of this Agreement or the completion of the Work.

**50.5 No Third-Party Rights**

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward, any Person not a party to this Agreement, except rights expressly contained in this Agreement for the benefit of the Indemnified Parties.

**50.6 Integration of this Agreement**

- (a) This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.
- (b) For the purposes of assumption or rejection under Section 365 of title 11 of the United States Bankruptcy Code, the DDC and the Design-Builder agree and expressly intend that this Agreement (including all Exhibits) constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible, so that, among other things, no part of this Agreement could be separated from any other part.

**50.7 Drafting Responsibility**

The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the Party (or whose counsel) prepared the executed agreement or any earlier draft of the same.

**50.8 Severability**

- (a) If any clause, provision, Article, Section, subsection or part of this Agreement is ruled invalid (including due to a Change in Law) by a court having proper jurisdiction, the Parties must:
  - (i) promptly (and in any event within ten Business Days) after the ruling, meet and negotiate a substitute for the clause, provision, Article, Section, subsection or part, which will, to the greatest extent legally permissible, effect the original intent of the Parties, including any adjustment to the DDC's compensation to the Design-Builder's account for any change in the Work resulting from the invalidated portion; and
  - (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared the invalidity for an interpretation of the invalidated portion to guide the negotiations.
- (b) The invalidity or unenforceability of any clause, provision, Article, Section, subsection or part will not affect the validity or enforceability of the balance of this Agreement, which will be construed and enforced as if this Agreement did not contain the invalid or unenforceable clause, provision, Article, Section, subsection or part.

**50.9 Time of Essence**

Time being of the essence, the Design-Builder must perform the Work in accordance with the Project Schedule.

**50.10 Expenses**

Subject to the terms of this Agreement, each Party is presumed to perform its respective obligations under this Agreement at its own cost and expense.

**50.11 No Estoppel.**

Neither the City, any agency, official, agent or employee, will be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the City or any other official, agent or employee of the City, either before or after the Final Completion of the Work and payment for such Work:

- (a) from showing the true and correct classification, amount, quality or character of the Work actually done or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made, or that the Work, or any part, does not in fact conform to the requirements of the Agreement; and
- (b) from demanding and recovering from the Design-Builder any overpayment made to it, or such damages as the City may sustain by reason of the Design-Builder's failure to perform each and every part of its obligations under this Agreement.

**50.12 Tax Exemption**

- (a) The City is exempt from payment of Federal, State, and local taxes, including sales and compensating use taxes of the State of New York and its cities and counties on all tangible personal property sold to the City pursuant to the provisions of this Agreement. These taxes are not to be included in the Contract Price or any Allowance or Change Order. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Design-Builder, Subcontractor or to tangible personal property which, even though it is consumed, is not incorporated into the completed Work (consumable supplies) and tangible personal property that the Design-Builder is required to remove from the Project Site during or upon completion of the Work. The Design-Builder and its Subcontractors will be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such leased tools, machinery, equipment or other property and upon all such consumable supplies and tangible personal property that the Design-Builder is required to remove from the Project Site during or upon completion of the Work.
- (b) As part of the Contract Price, the Design-Builder agrees to transfer all tangible personal property, other than consumable supplies and other tangible personal property that the Design-Builder is required to remove from the Project Site during or upon completion of the Work, that is required, necessary or proper for or incidental to the construction of the Project covered by this Agreement.
- (c) In accordance with Section 20 NYCRR Section 541.3(d), the DDC will not pay sales tax for any such tangible personal property that it purchases from the Design-Builder pursuant to this Agreement. With respect to such tangible personal property, the Design-Builder, at the request of the DDC, will furnish to the DDC such bills of sale and other instruments as may be required by the DDC, properly executed, acknowledged and delivered assuring to the DDC title to such tangible personal property, free of liens or encumbrances, or both, and the Design-Builder will mark or otherwise identify all such tangible personal property as the property of the DDC.
- (d) Title to all tangible personal property to be transferred by the Design-Builder to the DDC pursuant to the provisions of this Agreement will immediately vest in and become the sole

property of the DDC upon delivery of such tangible personal property to the Project Site. Notwithstanding such transfer of title, the Design-Builder will have the full and continuing responsibility to install such tangible personal property in accordance with the provisions of the Agreement, protect it, maintain it in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance, and furnish additional tangible personal property in place of any that may be lost, stolen or rendered unusable, without cost to the DDC, until such time as the Work covered by this Agreement is fully accepted by the DDC. Such transfer of title will in no way affect any of the Design-Builder's obligations under this Agreement. In the event that, after title has passed to the DDC, any of the tangible personal property is rejected as being defective or otherwise unsatisfactory, title to all such tangible personal property will be deemed to have been transferred back to the Design-Builder.

- (e) The purchase by Subcontractors of tangible personal property to be sold under this Agreement will be a purchase or procurement for resale to the Design-Builder (either directly or through other Subcontractors) and therefore not subject to the above sales and compensating use taxes, provided that the Subcontracts and purchase agreements provide for the resale of such tangible personal property and that such Subcontracts and purchase agreements are in a form similar to this Agreement with respect to the separation of the sale of consumable supplies and tangible personal property that the Design-Builder is required to remove from the Project Site during or upon completion of the Work from the Work and labor, services, and any other matters to be provided, and provided further that the Subcontracts and purchase agreements provide separate prices for tangible personal property and all other services and matters. Such separation will actually be followed in practice, including the separation of payments for tangible personal property from the payments for other Work and labor and other things to be provided.
- (f) At any time after the NTP 1 Date, DDC will furnish the Design-Builder with an exempt purchase certificate upon request. The Design-Builder and its Subcontractors will furnish such certificate to all persons, firms or corporations from which they purchase tangible personal property for the performance of the Work covered by the Agreement.
- (g) In the event any of the provisions of this Section 50.12 will be deemed to be in conflict with any other provisions of the Agreement or create any ambiguity, then the provisions of this Section 50.12 will control.

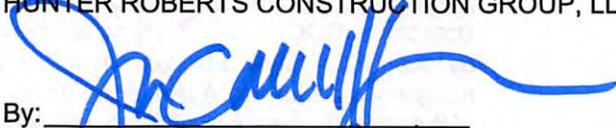
### 50.13 Counterparts

This Agreement may be signed in any number of counterparts, each of which will be an original. Together, all counterparts form one single document.

This Agreement is executed by the Parties as of the date written at the beginning of this Agreement.

**DESIGN-BUILDER**

HUNTER ROBERTS CONSTRUCTION GROUP, LLC

By:   
Name: James C. McKenna  
Title: CEO

**THE CITY OF NEW YORK,**  
By and through **THE DDC,**

By: *Lorraine Grillo*

Name: Lorraine Grillo

Title: Commissioner

Approved as to Form and  
Certified as to Legal Authority

*Michael Bank*

Acting Corporation Counsel

Date: 12/29/2020

Digitally signed  
by MR  
DN: cn=MR, o,  
ou,  
email=mr@ltdlaw  
.nyc.gov, c=US  
Date: 2020.12.29  
08:46:09 -0500

## EXHIBIT 1

### Definitions

Capitalized terms and acronyms used in this Agreement have the meanings given in this Exhibit 1 and should be construed to include each term in its singular and plural forms. Each bolded term below has the corresponding meaning opposite the term.

- Abandon** To abandon all or a material part of the Work, which will be deemed to have occurred if:
- (a) the Design-Builder demonstrates through statements, acts or omissions an intent not to continue (for any reason other than a Delay Event that materially interferes with its ability to continue) to perform all or a material part of the Work; or
  - (b) no significant Work (taking into account the Progress Schedule and any Delay Event) on the Project or a material part of the Project is performed for a continuous period of more than 30 days.

**Adjacent Property** Means any private or public property adjacent to the Project Site, which may be impacted directly or indirectly by the Design-Builder's performance of the Work, including any properties considered "adjoining properties" for purposes of City Administration Code Section 3309, et seq.

- Adverse Weather Event**
- (a) the actual monthly average temperature is more than 10% above or below the monthly normal temperature; or
  - (b) the actual number of days of precipitation (of more than 0.1 inch) for a month exceeds the corresponding number set out in the following table:

Month	Days on which precipitation exceeds 0.1 inch
January	9
February	9
March	10
April	9
May	8
June	8
July	7
August	9

September	8
October	8
November	9
December	9

- Affected Party** Defined in the definition of Force Majeure Event.
- Affiliate** In relation to any Person, any entity that, directly or indirectly, through one or more intermediaries:
- (a) has a 10% or more voting or economic interest in that Person; or
  - (b) Controls, is Controlled by, or is under common Control with that Person.
- Agency Chief Contracting Officer (ACCO)** The position delegated authority by the DDC to organize and supervise the procurement activity of subordinate DDC staff in conjunction with the City Chief Procurement Officer designated by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCO.
- Aggregate Liability Cap** Defined in Section 14.7(b).
- Agreement** This Agreement (including all its Exhibits), as amended at any time.
- Agreement Date** Defined in the Preamble to this Agreement.
- Allowance** An amount included in the Contract Price and identified in Section 22.4 (*Allowances*), that is intended to cover costs of Allowance Work.
- Allowance Approval** A written document issued by the DDC after the NTP 1 Date that is signed by the DDC Representative and the Design-Builder Representative in accordance with Section 26.4 (*Allowance Approval*) and sets out the agreed or determined position regarding Allowance Work on all of the following:
- (a) the scope and terms for the implementation of the applicable approved Allowance Work;
  - (b) the amount withdrawn to date against the applicable Allowance; and
- the amount approved to be drawn against the applicable Allowance for the approved Allowance Work.
- Allowance Payment Request** A written request to receive funds from any Allowance in the form agreed between the Parties and submitted to the DDC to be signed

and approved in accordance with Section 22.5 (*Allowance Payment Request*).

**Allowance Work**

Work to be performed by the Design-Builder that is eligible to be paid for through any Allowance.

**Applicable Law**

Any of the following:

- (a) the City Charter, the City Administrative Code, local rules of the City, the Constitutions of the United States and the State, and any other statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process); or
- (b) any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity,

that is applicable and binding with respect to the Project Site, the Work, the Project or any relevant Person performing or responsible for performing the Work, whether taking effect before or after the Agreement Date, in each case as amended, revised, supplemented or otherwise modified from time to time. Applicable Standards, are excluded from the definition of Applicable Laws.

**Applicable Relief**

Defined in Section 27.1(a) (*Entitlement to Request Applicable Relief*).

**Applicable Standards**

All applicable standards, manuals, references, guidelines, policies, specifications, handbooks and advisory circulars referenced in this Agreement or required to be used pursuant to Best Management Practice, as amended, revised, supplemented or otherwise modified from time to time., which are not issued by a Governmental Entity. Applicable Standards are not Applicable Laws and changes in Applicable Standards are not eligible to be Changes in Law.

**Approved Materials**

Steel and prefabricated units, including solar panels, windows or any other materials approved in writing by the DDC.

**Archaeological Remains**

Any antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains and other similar remains of archaeological or paleontological interest discovered on any part of the Project Site.

**Architect of Record or AOR**

The professional architect or architectural firm licensed in the State of New York responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing Record Drawings with respect to the Project.

**Authorized Representatives**

Defined in Section 39.1(a) (*Authorized Representatives*).

<b>Available Documents</b>	All written information provided to the Design-Builder or any Design-Builder Party by the DDC which pertain to the Project Site or the Project, including: <ul style="list-style-type: none"><li>(a) the RFP and its contents (including the documents in Part III of the RFP);</li><li>(b) all contents provided on any digital document portal by the DDC; and</li><li>(c) any Baseline Site Investigation Assessments provided to the Design-Builder.</li></ul>
<b>Award Fees</b>	Defined in Section 23.2 ( <i>Award Fees</i> ).
<b>Award Fee Program</b>	Amounts eligible to be awarded to Design-Builder as set out in Exhibit 4 ( <i>Award Fees</i> ).
<b>Award Fee Program and Early Completion Allowance</b>	An amount included in the Contract Price and identified in Section 22.4(c) ( <i>Award Fee Program and Early Completion Allowance</i> ).
<b>B&amp;R Site</b>	Defined in Section 42.1 ( <i>Maintenance of Records</i> ).
<b>Baseline Site Investigation Assessment</b>	A report or reports, including investigation and sampling results, describing the Project Site, any existing structures on the Project Site, site conditions, including the identity, location and concentrations of Hazardous Materials provided by the DDC to the Design-Builder.
<b>Best Management Practice</b>	The exercise of the degree of skill, diligence, prudence and foresight that is reasonably and ordinarily expected from a skilled and experienced designer, engineer or construction contractor seeking in Good Faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals, and Applicable Standards and engaged in the same type of undertaking under similar circumstances and conditions in the New York metro-area. Best Management Practice is not static but rather will change over time; provided, however, that Best Management Practice with respect to any particular activity will be determined at the time when such particular activity is performed.
<b>BIM Execution Plan</b>	The plan prepared in accordance with Article 5 ( <i>BIM Coordination</i> ) of the Standard Project Requirements.
<b>Building Information Modeling or BIM</b>	Digital representation of physical and functional characteristics of a facility.
<b>Blue Book</b>	Defined in Section 3.2(d) ( <i>Construction Work Net Costs</i> ) of Exhibit 3 ( <i>Extra Work &amp; Allowance Work Costs</i> ).
<b>Board Members</b>	Members of the Disputes Review Board.

<b>Borough-Based Jails Program or BBJ</b>	DDC's Design-Build Borough-Based Jail Program to demolish three existing jails in Manhattan, Brooklyn and Queens and to design and construct four new Detention Facilities in each of Manhattan, the Bronx, Brooklyn and Queens, as well as perform various Early Work necessary for the new Detention Facilities, including the Project.
<b>Boulder Rock</b>	Boulders or parts of boulders measuring one cubic yard or more in volume (to be measured by multiplying the maximum cross section area by seven tenths of the length of that which is to be removed) in open cuts, unbroken ledge rock in its original formation which cannot be removed by ditching machines, ripper, rock plow, backhoe, or other mechanical means and which can only be removed by air hammers or by blasting, drilling or plug and feather. Boulder Rock does not include softer rock formations encountered which can be removed by mechanical means other than air hammer or drilling and blasting
<b>Business Day</b>	Any day that is not a Saturday, a Sunday or any of the public holidays observed by the DDC from time to time.
<b>CCIP</b>	Defined in Exhibit 6 ( <i>Insurance Coverage Requirements</i> ).
<b>CEI</b>	Current Escalation Index.
<b>Certificate of Final Completion</b>	A written certificate issued by the DDC certifying that the Design-Builder has achieved Final Completion.
<b>Certificate of Substantial Completion</b>	A written certificate issued by the DDC certifying that the Design-Builder has achieved Substantial Completion.
<b>CGL</b>	Defined in Exhibit 6 ( <i>Insurance Coverage Requirements</i> ).
<b>Change in Control</b>	Any Equity Transfer, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Design-Builder or a DB Member or a material aspect of its respective business.
<b>Change in Law</b>	<p>The repeal, replacement (in whole or in part) of, the amendment, alteration or modification to, any Applicable Laws by any Governmental Entity that occur at any time after the Setting Date and are either:</p> <ul style="list-style-type: none"><li>(i) are binding on the Design-Builder's performance of the Work or;</li><li>(ii) if not binding on the Design-Builder, are both (A) typically complied with in the construction industries and (B) necessary in order to comply with Best Management Practice,</li></ul> <p>and in either case, adversely impact the performance of the Work.</p> <p>Change in Law excludes: (i) any repeal, amendment, alteration, modification or change in interpretation of any Applicable Law that</p>

is pending, passed or adopted, but not yet effective, as of the Setting Date, (ii) any Governmental Approval, (iii) any changes to Applicable Standards, (iv) any change in federal, state or local taxes or levies assessed on the basis of Design-Builder's income, profits, revenues or gross receipts, or any other taxes, fees, royalties or imposts for which Design-Builder is responsible hereunder, and (v) a change in taxes, levies, withholdings or labor wage laws that vary the compensation, benefits or amounts to be paid to, on behalf of or on account of Design-Builder's or its Subcontractors' employees.

**Change Order**

A written document issued by the DDC after the Agreement Date that is signed by the DDC Representative and the Design-Builder Representative in accordance with Section 26.5 (*Change Order*) and sets out the agreed or determined position on all of the following:

- (a) the scope of Extra Work (and any associated amendments to this Agreement); and
- (b) the adjustment (if any) to the Contract Price.

**City**

The City of New York.

**City Administrative Code**

New York City Administrative Code.

**City Asset**

Any airport, port, road, sidewalk, bike lane, bus lane, tunnel, train, bus, bridge, facility, structure, improvement, fixture, equipment, utility, or asset otherwise owned, leased, or operated by the City or any third-party on behalf, or at the direction, of the City.

**City Charter**

New York City Charter.

**City Chief Procurement Officer or CCPO**

The position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

**City Comptroller**

The Comptroller of the City of New York.

**City Corporation Counsel**

The Law Department of the City.

**City Governmental Approvals**

Compliance with the Uniform Land Use Review Procedure (ULURP), obtaining any changes to the City map, zoning amendments and any approval from the State Commission on Correction.

**City Green Building Standards**

Defined in Section 12.3(a).

**Claim**

Any and all claims, disputes, allegations, causes of action, demands, suits or proceedings alleging or seeking damages, injuries, liabilities, obligations, losses, costs and expenses.

**Compensable Delay Event**

Each of the following events:

- (a) any of the following that cause a material delay or interruption to the Design-Builder's performance or ability to perform under this Agreement:
  - (i) failure by the DDC to grant or provide access to the Project Site at any time, subject to the terms of this Agreement;
  - (ii) failure by the DDC to issue any NTP, except NTP 1, within fourteen days of the Design-Builder fulfilling the applicable conditions for issuance of each NTP set out in this Agreement or failure of DDC to issue NTP 1 within fourteen days of registration of the Agreement pursuant to Charter Section 328;
  - (iii) failure beyond thirty days in the aggregate by the DDC to timely provide responses to any Mandatory DDC Approval Submittals, following delivery of notice from the Design-Builder requesting such action in accordance with this Agreement;
  - (iv) any material interference of the Design-Builder's performance of the Work or physical damage to the Work directly attributable to the City's or its separate contractors work in, or around, the Project Site, not otherwise expressly permitted or contemplated in the Stakeholder Coordination Plan or this Agreement; or
  - (v) failure by DDC to timely pay any undisputed amount due and payable to the Design-Builder under this Agreement;
- (b) the issuance by the DDC of a DDC Directive;
- (c) any suspension of the Work that constitutes a Compensable Delay Event in accordance with Article 35.4 (*Suspension Orders*);
- (d) the issuance by the DDC of a Safety Compliance Order under Section 9.3 (*Duty to Comply*) where it is determined by the DDC or agreed between the Parties under the Dispute Resolution Procedures, that the Design-Builder was not in breach of the terms of this Agreement, including its Site Safety Plan; provided, that no Design-Builder Party that is disruptive to the efficient functioning of the City Assets;
- (e) the discovery of any Unknown Geotechnical Condition within the Project Site, solely during the Site Validation Period;

- (f) the discovery of any Unknown Physical Conditions within the Project Site, solely during the Site Validation Period;
- (g) the discovery of any Unknown Endangered Species within the Project Site;
- (h) the discovery of any Unknown Archaeological Remains within the Project Site;
- (i) the discovery of any Unknown Hazardous Environmental Conditions within the Project Site;
- (j) the discovery of any Unknown Utility within the Project Site;
- (k) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under Applicable Law that materially adversely affects the DDC's or the Design-Builder's performance under this Agreement,
- (l) any latent defects in any existing City Assets which cause a material adverse impact on the Design-Builder's performance of the Work;
- (m) any Governmental Entity's (other than DDC or the City) performance of adjacent work causes a delay or increase in costs to the Design-Builder's performance of the Work;
- (n) any PDC directed modifications to the extent such modifications constitute a Compensable Delay Event under Section 7.2(c) (*Design Work*); or
- (o) a Change in Law.

except no Compensable Delay Event will have occurred, in each case, to the extent attributable to either or both (A) any breach of (i) any Contract Document, (ii) Applicable Law, (iii) any Governmental Approval or (iv) any agreement or requirements by a Utility or (B) any negligence, recklessness, intentional tortious act of a Design-Builder Party.

**Compensable Delay Event Allowance**

An amount included in the Contract Price and identified in Section 22.4(a) (*Compensable Delay Event Allowance*).

**Completion Conditions**

Defined in Section 18.1 (*Inspection and Review*).

**Completion Extension**

An extension approved by DDC to any of the Guaranteed Completion Dates in connection with the DDC's approval of any Delay Event, and may be issued in connection with a Change Order or Allowance Approval.

<b>Completion Milestones</b>	Substantial Completion and Final Completion.
<b>Completion Notice</b>	Defined in Section 18.1 ( <i>Inspection and Review</i> ).
<b>Completion Protocols</b>	The process and protocols for certifying completion of a Completion Milestone under and in accordance with 18.1 ( <i>Inspection and Review</i> ), 18.2 ( <i>Certification</i> ) and 18.3 ( <i>Disputes</i> ).
<b>ConEd</b>	Consolidated Edison, Inc. and any subsidiaries.
<b>Construction Documents</b>	All shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for the Construction Work in accordance with this Agreement.
<b>Construction Quality Control and Assurance Plan</b>	The plan prepared in accordance with Article 9 ( <i>Quality Requirements</i> ) of the Standard Project Requirements.
<b>Construction Work</b>	All Work related to the construction of the Project (including any Demolition Work required in this Agreement).
<b>Contract Documents</b>	The documents referred to in Section 1.3(a) ( <i>Order of Precedence</i> ), the executed Performance Bond and Payment Bond, the Guarantee, the Release for Construction Documents and any Design-Builder plans for the performance of the Work approved by DDC.
<b>Contract Price</b>	The "Contract Price" specified in Section 22.1 ( <i>Contract Price</i> ), as may be adjusted in accordance with this Agreement.
<b>Control</b>	The possession, directly or indirectly, of the power, exercisable jointly or severally, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A Person may have Control of a specified Person notwithstanding that one or more third parties may have rights to participate in major decisions of such specified Person.
<b>CPLR</b>	Defined in Section 42.1(e) ( <i>Maintenance of Records</i> ).
<b>Critical Path</b>	Defined in Section 1.3 ( <i>Definitions</i> ) of the Standard Project Requirements.
<b>Daily Progress Report</b>	The report to be delivered in accordance with Article 2 ( <i>Project Management and Coordination</i> ) of the Standard Project Requirements.
<b>Day or day</b>	A calendar day.

<b>DB Insurance Policies</b>	The insurance policies the Design-Builder is required to carry or ensure are carried under Article 33 ( <i>Insurance Procured by the Design-Builder</i> ).
<b>DB Member</b>	Each Equity Participant and/or, if the Design-Builder is a partnership, joint venture, or limited liability company, any general partner or any member of the partnership, joint venture or limited liability company.
<b>DB Modification Request</b>	Defined in Section 26.2 ( <i>Design-Builder Proposal</i> ).
<b>DDC</b>	The New York City Department of Design and Construction.
<b>DDC Actual Damages</b>	Defined in Section 35.6(a)(iii).
<b>DDC Directive</b>	Defined in Section 26.8(a) ( <i>DDC Directive</i> ).
<b>DDC Modification Request</b>	Defined in Section 26.1(b).
<b>DDC Name Only Governmental Approval</b>	Defined in Section 11.1(b) ( <i>Design-Builder Responsibility for Governmental Approvals</i> ).
<b>DDC Representative</b>	The individual designated as the DDC's authorized representative in accordance with Article 39 ( <i>Authorized Representatives</i> ).
<b>DDC Termination Notice</b>	Defined in Section 35.5 ( <i>Termination for Design-Builder Default</i> ).
<b>Deemed Approval Submittal</b>	Any Submittal that is identified in the Schedule of Submittals as a Deemed Approval Submittal and is subject to the approval or consent of the DDC but following a period of time specified in this Agreement or the Project Schedule, may be deemed approved for purposes of the Design-Builder advancing the Work.
<b>Delay Event</b>	Each of the following: <ul style="list-style-type: none"><li>(a) a Compensable Delay Event;</li><li>(b) a Force Majeure Event;</li><li>(c) fire, explosion, tornados, hurricanes, flood, earthquakes, riot and civil commotion;</li><li>(d) an Adverse Weather Event;</li><li>(e) any blockade or embargo;</li><li>(f) any official or unofficial strike, lockout, go-slow or other labor dispute generally affecting the construction industry or a significant sector of it; or</li><li>(g) following the Design-Builder's timely and complete submission of a compliant or legally sufficient application or request for approval or a permit, any unreasonable and</li></ul>

unjustifiable delay by any Governmental Entity in issuing any permit or approval required for the performance of the Work, following a period equal to the greater of (i) the date identified in the Design-Builder's Project Schedule for such governmental approval to be issued or (ii) the time period provided for such issuance under applicable law, plus a period of thirty days;

- (h) any material failure by a Stakeholder (other than a Utility) to comply with the requirements and obligations under any Stakeholder Coordination Plan, as applicable;
- (i) any delay attributable to (i) a Utility Owner's refusing to enter or delay in entering into a utility relocation or similar agreement on terms customary for utility providers affected by projects of a similar size and scope either with the DDC or the Design-Builder, as applicable necessary for performance of the Work or (ii) a Utility Owner failing to perform its obligations under a two-party agreement in accordance with the terms of such agreement, where such delay (or delays resulting from such failures by multiple Utility Owners) causes one or more Critical Path activities approved by the DDC to be adversely impacted for a period of fifteen days in the aggregate. The computation of fifteen days in the aggregate will treat any day of delay that runs concurrently with another day of delay, regardless of whether it is a delay caused by the Utility Owner or a different Utility Owner, as a single day and not as two days,

except, in each case, no Delay Event will have occurred, in each case, to the extent attributable to either or both (A) any breach of (i) any Contract Document, (ii) Applicable Law, (iii) any Governmental Approval or (iv) any agreement or requirements by a Utility or (B) any negligence, recklessness, intentional tortious act of a Design-Builder Party.

<b>Delay Liquidated Damages</b>	Defined in Section 14.3 ( <i>Liquidated Damages for Delay</i> ).
<b>Demolition Work</b>	All Work related to the demolition and removal of any existing materials or structures on the Project Site, as more particularly set forth in the Project Requirements.
<b>Department of Investigation</b>	The City Department of Investigation.
<b>Design-Builder</b>	Defined in the preamble.
<b>Design-Builder Default</b>	Defined in Section 35.1 ( <i>Design-Builder Default</i> ).
<b>Design-Builder Default Notice</b>	Defined in Section 35.2(a) ( <i>Notice of Design-Builder Default and Cure Periods</i> ).
<b>Design-Builder Party</b>	Each of the following:

- (a) the Design-Builder;
- (b) the DB Members;
- (c) any Guarantor;
- (d) the Subcontractors;
- (e) any other Persons performing any of the Work for or on behalf of the Design-Builder;
- (f) any other Persons for whom the Design-Builder may be legally or contractually responsible; and
- (g) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the parties referred to in clauses (a) to (f).

**Design-Builder Proposal**

Defined in Section 26.2.

**Design-Builder Proposal Commitments**

The Proposal and commitments made by the Design-Builder, as set out in Exhibit 8 (*Design-Builder Commitments*).

**Design-Builder Release of Hazardous Materials**

Any Hazardous Materials Release:

- (a) to the extent attributable to the acts, omissions, negligence, intentional tortious act or breach of Applicable Law or contract by any Design-Builder Party, provided that the removal of Hazardous Materials, or any Remedial Action in respect of Hazardous Materials, by a Design-Builder Party in accordance with the requirements of the Contract Documents will not be a "Design-Builder Release of Hazardous Material."
- (b) involving any Hazardous Materials arranged to be brought onto the Project Site or elsewhere by a Design-Builder Party, regardless of cause; or
- (c) to the extent attributable to the use, containment, storage, management, handling, transport and disposal of any Hazardous Materials, by a Design-Builder Party in breach of any of the Contract Documents. Applicable Law, Applicable Standards or Governmental Approvals.

**Design-Builder Representative**

The individual designated as the Design-Builder's authorized representative in accordance with Article 39 (*Authorized Representatives*).

**Design Documents**

All drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations,

electronic files, records and submittals necessary for, or related to, the design, redesign, engineering, or architecture of the Project.

<b>Design Lead</b>	Defined in Exhibit 9 ( <i>Key Personnel and Key Subcontracts</i> ).
<b>Design Quality Control and Assurance Plan</b>	The plan prepared in accordance with Article 9 ( <i>Quality Requirements</i> ) of the Standard Project Requirements.
<b>Design Work</b>	All work related to the design, redesign, engineering or architecture for the Project.
<b>Detailed Delay Event Notice</b>	Defined in Section 27.2(d).
<b>Detention Facility</b>	Each new humane and innovative detention facility, to be designed, constructed and commissioned by a Design-Builder, as part of the BBJ, in each of Manhattan, the Bronx, Brooklyn and Queens.
<b>Disagreeing Party</b>	Defined in Section 41.3(b).
<b>Disclosure Demand</b>	Defined in Section 45.1 ( <i>Confidentiality</i> ).
<b>Dispute</b>	Any dispute, disagreement or controversy between the DDC and the Design-Builder concerning their respective rights, performance or obligations under the Contract Documents, including with respect to any Claim, alleged breach or failure to perform and any remedy or any Informal Dispute, but only to the extent such Informal Dispute is not otherwise resolved through the Escalation Resolution Ladder.
<b>Dispute Notification</b>	Defined in Section 41.2(a).
<b>Dispute Notification Response</b>	Defined in Section 41.2(b).
<b>Dispute Resolution Procedure(s)</b>	The procedures for resolving disputes in Article 41 ( <i>Dispute Resolution Procedure</i> ).
<b>Dispute Statement</b>	Defined in Section 41.4(a).
<b>Disputes Review Board</b>	The three-person board, comprised of the Board Members appointed in accordance with the DRB Agreement and this Agreement for the purpose of hearing Disputes under and in accordance with Section 41.4 ( <i>Disputes Review Board</i> ) of the Agreement
<b>Dollars or \$</b>	The lawful money of the United States of America.
<b>Draft Reinstatement Plan</b>	Defined in Section 33.8(b).
<b>DRB Agreement</b>	The Disputes Review Board Agreement to be entered into by the Design-Builder, the DDC, and the Board Members, substantially in the form attached hereto as Part 1 of Exhibit 12 ( <i>Disputes Review Board</i> ).

<b>Early Completion Bonus</b>	Defined in Section 23.1(a) ( <i>Early Completion Bonus</i> ).
<b>Early Warning Trigger</b>	Defined in Section 14.2 ( <i>Delays</i> ).
<b>Early Work</b>	The infrastructure, demolition, design and construction work being performed by DDC or DDC contractors in advance of commencement of construction of any of the Detention Facilities, excluding this Project.
<b>Emergency</b>	<p>Any unplanned event affecting the Project or the Project Site that, in the DDC's sole judgment:</p> <ul style="list-style-type: none"><li>(a) presents an immediate or imminent hazard or risk to workers, other personnel or the general public,</li><li>(b) presents an immediate or imminent hazard or risk to:<ul style="list-style-type: none"><li>(i) the Project or any City Asset;</li><li>(ii) any third party's property or equipment;</li><li>(iii) the Environment,</li></ul></li><li>(c) is declared a state of emergency under City, State or federal law;</li><li>(d) will result in unreasonable interference with operations by any Person at any City Asset, as determined by the DDC; or</li><li>(e) is recognized or declared by the Mayor, or designee of the Mayor or any law enforcement agency or Governmental Entity, as an emergency.</li></ul>
<b>Endangered Species</b>	Any animal or plant species listed as threatened or endangered in accordance with any Environmental Requirement or that is protected from harm or harassment under an Environmental Requirement.
<b>Engineer of Record or EOR</b>	An individual, or individuals, properly licensed in the State of New York as an engineer, responsible for preparing the Final Design Documents, all specifications, certification of all shop drawings, Record Drawings, inspections, testing, and any other approvals required by the Design-Builder to achieve each Completion Milestone.
<b>ENR Building Index</b>	Defined in Section 22.4(b) ( <i>Unit Price Work and Escalation Costs</i> ).
<b>Environment</b>	Air, soils, surface waters (including wetlands), Groundwater, land, sediments, surface or subsurface strata, biological resources, including Endangered Species, natural systems, including ecosystems, and cultural, historic, archaeological and paleontological resources.

<b>Environmental Requirements</b>	All requirements and conditions (including all mitigation) to be satisfied under the Contract Documents, Applicable Laws, Applicable Standards and Governmental Approvals (including any environmental Permit, article 8 of the State environmental conservation law, and where applicable, the requirements of the national environmental policy act), and any other requirements, policies and guidelines of the DDC, concerning the Environment and Hazardous Materials that are applicable to the Project Site or the Work.
<b>Equity Participant</b>	Any Person holding (directly or indirectly) a 15% or greater interest in the Design-Builder.
<b>Equity Transfer</b>	Any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of direct or indirect equity interests in the Design-Builder or any DB Member.
<b>Escalation Items</b>	The cost of standard structural steel, Portland cement, and lumber used or purchased by the Design-Builder to perform the Work.
<b>Escalation Resolution Ladder</b>	Defined in Section 40(a) ( <i>Escalation Resolution Ladder</i> ).
<b>Escalation Year</b>	Defined in Section 22.4(b)(iv).
<b>Estimated DDC Damages</b>	Defined in Section 35.6(a)(ii)(A).
<b>Extended Force Majeure Event</b>	Defined in Section 28.1(d).
<b>Extra Work</b>	Any work that is required to be performed by the Design-Builder and which at that time is not otherwise covered or included in the Work by the Contract Documents, whether it is in the nature of additional work, altered work, deleted work, or otherwise, including in accordance with an Allowance Approval, Change Order or a DDC Directive.
<b>Fast-Track Dispute</b>	Disputes solely relating to either (i) amounts or Change Orders or Allowance Approvals that exceed 5% of the Contract Price or (ii) are in connection with DDC's refusal to certify Substantial Completion
<b>Fast-Track Dispute Notification</b>	Defined in Section 41.3(a).
<b>Fast-Track Dispute Rejection Notice</b>	Defined in Section 41.3(b).
<b>FF&amp;E</b>	Defined in Section 7.9(a) ( <i>Furniture, Fixtures and Equipment</i> ).
<b>FF&amp;E Allowance</b>	Defined in Section 22.4(d) ( <i>FF&amp;E Allowance</i> ).
<b>FF&amp;E Plan</b>	Defined Section 7.9(b)(i)(B).

<b>Final Completion</b>	Satisfaction of all of the Final Completion Conditions, as and when confirmed by the DDC's issuance of a Certificate of Final Completion.
<b>Final Completion Conditions</b>	Those conditions listed in Section 17.1 ( <i>Conditions to Final Completion</i> ).
<b>Final Design Documents</b>	The complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, design criteria, specifications, reports, studies, calculations, electronic files, records and Submittals prepared by the Design-Builder (and that have been Signed and Sealed by the Engineer of Record or Architect of Record, as applicable) and accepted by the DDC, necessary or related to the Construction Work.
<b>Force Majeure Event</b>	<p>The occurrence of any of the following events after the date of this Agreement that directly causes either Party (the "<b>Affected Party</b>") to be unable to comply with all or a material part of its obligations under this Agreement:</p> <ul style="list-style-type: none"><li>(a) war, civil war, invasion, violent act of foreign enemy or armed conflict;</li><li>(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project Site by the Design-Builder or a Design-Builder Party, or is a result of any breach by the Design-Builder of the terms of this Agreement;</li><li>(c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near the Project Site by the Design-Builder or a Design-Builder Party, or is as a result of any breach by the Design-Builder of the terms of this Agreement;</li><li>(d) an act of Terrorism;</li><li>(e) a quarantine due a pandemic, epidemic, endemic, outbreak of infectious disease or other public health emergency (collectively, referred to as "Public Health Emergencies" for the purpose of this section) that is ordered by a Governmental Entity or Public Health Emergency, which in each case, prevents or delays manufacture, shipment or delivery of equipment or supplies to the Project Site in accordance with the Project Schedule or otherwise directly and adversely impacts the performance of the Work; and</li><li>(f) acts of God (except that "acts of God" does not include events enumerated above or elsewhere in this Agreement, including as Delay Events or Compensable Delay Events).</li></ul>

<b>Formal Dispute</b>	Defined in Section 40(b) ( <i>Partnering Provisions</i> ).
<b>Freedom of Information Law</b>	Article 6 (Freedom of Information Law) of the Public Officers Law of the State of New York.
<b>Geotechnical Baseline Report</b>	The geotechnical report provided to the Proposers prior to the Setting Date.
<b>Good Faith</b>	Observance of reasonable commercial standards of fair dealing in a given trade or business.
<b>Governmental Approval</b>	All approvals, permits, permissions, consents, licenses, variances, certificates (including sales tax exemption certificates) registrations, notices, exemptions, exceptions, waivers, filings and authorizations (whether statutory or otherwise) that are required under Applicable Law in order to authorize the DDC or the Design-Builder to perform all or any part of the Work or obligations under this Agreement.
<b>Governmental Entity</b>	Any federal, state, municipal and other governmental authorities or quasi-governmental authorities, boards and agencies of any state, nation or government, including, without limitation, any court, and all agencies under the United States Departments of Interior, Commerce and Agriculture, the United States Food and Drug Administration and the United States Centers for Disease Control and Prevention, but not including the DDC.
<b>Green Book</b>	Defined in Section 3.2(d) ( <i>Construction Work Net Costs</i> ) of Exhibit 3 ( <i>Extra Work &amp; Allowance Work Costs</i> ).
<b>Groundwater</b>	Groundwater occurring beneath the Project Site, including groundwater flowing onto or under the Project Site, during or as a result of the Work.
<b>Guarantee</b>	The guarantee executed by the Guarantor in favor of the DDC with respect to the obligations of the Design-Builder.
<b>Guaranteed Completion Date</b>	The dates in Section 14.1 ( <i>Time for Completion</i> ) corresponding to achieving each of Substantial Completion or Final Completion, as applicable.
<b>Guarantor</b>	Any entity that guarantees the Design-Builder's performance in accordance with this Agreement and that executes the Form of Guarantee attached as Exhibit 11. <b>[Not required for this Project.]</b>
<b>Hazardous Environmental Condition</b>	The presence of any Hazardous Materials on, in, under or about the Project Site at concentrations or in quantities that are required to be removed or remediated by any Applicable Law or in accordance with the requirements of this Agreement or any Governmental Entity.

<b>Hazardous Materials</b>	Any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law, or any other substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health and safety.
<b>Hazardous Materials Release</b>	Any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the Environment, including any exacerbation of an existing Hazardous Environmental Condition.
<b>Indemnified Parties</b>	The City of New York, its respective officials, employees, agents and authorized representatives in connection with this Project.
<b>Indirect Losses</b>	Loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to payments expressly provided under this Agreement.
<b>Ineligible Dispute</b>	Disputes that are beyond the scope of the Work, including patents, copyrights, trademarks or trade secrets, or relating to proprietary rights in computer software, as well as injunctive relief, insurance claims, torts, prevailing wage or Design-Builder employment disputes and disputes involving third-parties that are being litigated in court or any dispute pertaining to indictments, convictions, or other charges or admissions of criminal acts which have led to a Design-Builder Default under this Agreement.
<b>Informal Dispute</b>	Defined in Section 40(b) ( <i>Partnering Provisions</i> ).
<b>Initial Delay Event Notice</b>	Defined in Section 27.2(b).
<b>Initial Schedule of Submittals</b>	Defined in Section 13.2(a).

<b>Insolvency Event</b>	With respect to any Person:  (a) any involuntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any Applicable Law, in any jurisdiction, except if the same has been dismissed within sixty days;  (b) any voluntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any Applicable Law, in any jurisdiction; or  (c) any general inability on the part of that Person to pay its debts as they fall due.
<b>Inspector General</b>	The New York City Department of Investigation's Inspector General assigned to review or investigate matters in connection with the Project.
<b>Instructions to Proposers (ITP)</b>	The Instructions to Proposers issued to the Proposers as part of the RFP, dated September 4, 2020.
<b>Insurance Policies</b>	Defined in Section 33.1(a).
<b>Insurance Proceeds</b>	Defined in Section 33.3.
<b>Integrity Monitor (IM)</b>	The private independent organization with legal, auditing, accounting, engineering and investigative expertise (and its subcontractors and sub-consultants) that the City has engaged to assist it in its fraud prevention efforts.
<b>Intellectual Property</b>	Any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by any Design-Builder Party for the purposes of carrying out the Work or otherwise for the purposes of this Agreement.
<b>Key Personnel</b>	The key management and supervisory personnel identified in Exhibit 9 ( <i>Key Personnel / Subcontractors</i> ) and any Persons who replace these individuals in accordance with Article 19 ( <i>Key Personnel / Key Subcontracts</i> ).
<b>Key Subcontract</b>	(a) the Subcontract with the Architect of Record identified in Exhibit 9 ( <i>Key Personnel / Key Subcontractors</i> );

- (b) the Subcontract with the Design-Lead identified in Exhibit 9 (*Key Personnel / Key Subcontractors*);
- (c) the Subcontract for Design Work with Thornton Tomasetti, Inc.; and
- (d) any other contracts agreed by the Parties to be a Key Subcontract or otherwise identified in Exhibit 9 (*Key Personnel / Key Subcontractors*).

<b>Key Subcontractor</b>	The contractual counterparty to the Design-Builder under any Key Subcontract.
<b>Labor Law</b>	The Labor Law of the State of New York.
<b>LD Cap</b>	Defined in Section 14.7 ( <i>Limitation on Liability</i> ).
<b>LEED</b>	An internationally recognized program that provides building owners and operators with a framework, developed by the USGBC, for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions and third party verification of green buildings based on the satisfaction of certain prerequisites and earned points required to achieve different levels of certification.
<b>LEED Gold Certification</b>	The Gold certification established by the LEED Rating System for New Construction & Major Renovation.
<b>Licensed Work Product</b>	Work Product and Intellectual Property created prior to the Agreement Date that was not created specifically for this Project, including Subcontractor Work Product, and specifically identified in the DB Proposal Commitments as “Licensed Work Product”.
<b>Losses</b>	Any loss, damage, injury, liability, obligation, cost, response cost, expense, fee, charge, judgment, penalty or fine. Losses include injury to or death of Persons, damage or loss of property, and harm or damage to the Environment.
<b>Lump Sum Amount</b>	Defined in Section 22.1(a).
<b>M/WBE</b>	Defined in Exhibit 14 ( <i>M/WBE Requirements</i> ).
<b>M/WBE Achievement and Utilization plan</b>	The M/WBE Achievement and Utilization Plan initially submitted in the Design-Builder’s Proposal and updated in accordance with this Agreement.
<b>M/WBE Goals</b>	Defined in Exhibit 14 ( <i>M/WBE Requirements</i> ) of this Agreement.
<b>M/WBE Requirements</b>	Exhibit 14 ( <i>M/WBE Requirements</i> ) of this Agreement.

<b>Mandatory DDC Approval Submittal</b>	Any Submittal identified and agreed among the Parties as a Mandatory DDC Approval Submittal in the Schedule of Submittals that is subject to the approval or consent of the DDC, in its absolute discretion, prior to the Design-Builder performing the applicable Work subject to the Submittal.
<b>Mayor</b>	The Mayor of the City.
<b>MDS</b>	Model Development Specification.
<b>MDS Plan</b>	Defined in Section 24.3(b)(ix).
<b>Minor Waiver</b>	Minor Waivers to the Contract Documents that do not adversely impact the Project Requirements and do not involve an adjustment in the Contract Price or any Guaranteed Completion Date, or both, and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents.
<b>Mobilization Payment</b>	Defined in Section 24.1(c) ( <i>Mobilization Payment</i> ).
<b>Modification</b>	Defined in Section 26.1(a) ( <i>Request for Proposal</i> ).
<b>Monthly Payments</b>	Those monthly amounts to be paid to the Design-Builder for the performance of the Work in accordance with Article 24 ( <i>Payment Provisions</i> ).
<b>Monthly Progress Report</b>	The report to be delivered in accordance with Article 6 ( <i>Progress Documentation – CPM</i> ) of the Standard Project Requirements.
<b>MTA</b>	The Metropolitan Transportation Authority, a public authority of the State of New York, and all of its affiliates or subsidiaries.
<b>MTA Force Account T&amp;Cs</b>	Defined in Section 5.4(a) ( <i>MTA Policies</i> ).
<b>National Grid</b>	National Grid plc, and National Grid USA Service Company, Inc.
<b>Net Costs</b>	With respect to any Compensable Delay Event, the effect or impact of that event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated actual and out-of-pocket costs of the Design-Builder. In the case of any categories of costs that are subject to Exhibit 3 ( <i>Extra Work and Allowance Work Costs</i> ), such costs will be determined in accordance with Exhibit 3 ( <i>Extra Work and Allowance Work Costs</i> ), excluding in all cases Indirect Losses.
<b>NTP</b>	Any notice to proceed issued by the DDC to the Design-Builder for the purpose of commencing portions of the Work or gaining access to the Project Site, as applicable.
<b>NTP 1 Date</b>	Defined in Section 7.1(d) ( <i>Notice to Proceed</i> ).

<b>OSHA</b>	The Occupational Safety and Health Administration.
<b>Other Contractor</b>	Any other design-build contractor, other than the Design-Builder, engaged by the DDC performing work on or around the Project Site in connection with BBJ.
<b>P&amp;T Standard Change</b>	Defined in Section 28.2 ( <i>Changes in Applicable Standards</i> ).
<b>Parksmart</b>	Green Business Certification Inc. doing business as "Parksmart".
<b>Parksmart Gold Certification</b>	Parksmart's gold certification standard for parking structures.
<b>Parties</b>	The DDC and the Design-Builder.
<b>PASSPort</b>	Defined in Section 20.1(a)(ii)(B).
<b>Payee Information Portal</b>	The City's Payee Information Portal available at <a href="http://www.nyc.gov/pip">www.nyc.gov/pip</a> .
<b>Payment Bond</b>	Defined in Section 4.2.
<b>Payment Requests</b>	Those monthly payment request submitted by the Design-Builder by the tenth of each month in accordance with Article 24 ( <i>Payment Provisions</i> ).
<b>PDC</b>	The New York City Public Design Commission, also known as the art commissioner pursuant to Chapter 37 of the City Charter.
<b>Performance Bond</b>	Defined in Section 4.2 ( <i>Performance Bond and Payment Bond</i> ).
<b>Person</b>	An individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization or a Governmental Entity.
<b>Personal Identifying Information</b>	Defined in Section 45.1(b) ( <i>Confidentiality</i> ).
<b>PPB Rule</b>	The Procurement Policy Board Rules of the City of New York.
<b>Pre-existing Hazardous Materials</b>	Any Hazardous Materials that exist in, on or under the Project Site prior to the date on which the Design-Builder gains possession of a relevant portion of the Project Site, including those that existed prior to the date that Design-Builder gains possession of a relevant portion of the Project Site but that manifest themselves after that date.
<b>Preferred Proposer</b>	The Proposer selected by the DDC in accordance with the ITP to enter into this Agreement.
<b>Progress Schedule</b>	The progress schedule developed and updated in accordance with Article 6 ( <i>Progress Documentation – CPM</i> ) of the Standard Project Requirements.

<b>Project</b>	The demolition of an existing surface parking-lot within the Project Site, and the design, construction, commissioning, repair and replacement, as applicable, of a multi-level parking garage within the Project Site all in accordance with the Specific Project Requirements and all other Work expressly provided or implied to satisfy the requirements under this Agreement.
<b>Project EI</b>	Defined in Section 22.4(b)(iv)(B).
<b>Project Labor Agreement</b>	The Project Labor Agreement attached to this Agreement as Exhibit 18 ( <i>Project Labor Agreement</i> ).
<b>Project Kick-off Meeting</b>	Defined in Article 2 ( <i>Project Management and Coordination</i> ) of the Standard Project Requirements.
<b>Project Management and Execution Plan</b>	The plan prepared in accordance with Article 2 ( <i>Project Management and Coordination</i> ) of the Standard Project Requirements.
<b>Project Management Consultant or PMC</b>	The joint venture of AECOM-Hill JV, a joint venture between AECOM USA, Inc., and Hill International, Inc
<b>Project Office</b>	The Design-Builder's temporary office located on the Project Site.
<b>Project Requirements</b>	The Standard Project Requirements, the Specific Project Requirements and the Reference Documents.
<b>Project Schedule</b>	The schedule, including any amendments, for performance of the Work necessary to deliver the Project by the Design-Builder and approved by the DDC under the terms of the Agreement.
<b>Project Site</b>	The area within (i) the "DB Work Limit Boundary" as identified in Exhibit 10 ( <i>Project Site</i> ) and (ii) solely to the extent, and for the period of time, the Design-Builder is entitled to utilize any Temporary Access Areas, as described in Exhibit 10 ( <i>Project Site</i> ).
<b>Project Site Access Schedule</b>	The schedule for the Project Site or portions of the Project Site to be made available to the Design-Builder as identified in Exhibit 10 ( <i>Project Site</i> ).
<b>Proposal Date</b>	The date proposals are due from the proposers under the RFP for the Project.
<b>Proposer</b>	Each firm or team of firms that was shortlisted in accordance with the RFQ and invited to submit a proposal to the DDC in response to the RFP.
<b>Punch List</b>	An itemized list of Work that remains to be completed, corrected, adjusted, or modified following Substantial Completion, as

approved by the DDC in accordance with this Agreement and the Standard Project Requirements.

**Qualified Surety**

A Surety or insurance company that:

- (a) is authorized to do business and issue bonds in the State of New York;
- (b) appears on the current list of the Treasury Department of the United States as acceptable as sureties to the Treasury Department of the United States and whose aggregate underwriting limitations on any one risk equals or exceeds \$20 million;
- (c) rated in the top 2 categories by 2 of the 4 major rating agencies or have a then-current A.M. Best's Financial Strength Rating and Financial Size of at least "A-/VIII"; and
- (d) is approved by the DDC.

**Quality Assurance or QA**

The system of procedures developed and performed independently of the design and construction activities to assure that the Quality Control activities are occurring as appropriate on a day to day basis and that the product of the work meets quality standards. It includes the planning and activities necessary to verify that the required Quality Control activities have been satisfactorily conducted and that the quality requirements are met.

**Quality Assurance Manager**

The individual designated by the Design-Builder whose responsibility is to oversee implementation of the Quality Management Program.

**Quality Control or QC**

The system of procedures to be performed by the Design-Builder for the day to day checking, monitoring, inspection, sampling, testing and evaluation of Work throughout the Project to assess, adjust and approve design, production and construction processes to ensure that the design, materials and workmanship of the Work meets the requirements of the Contract Documents and to control the quality being produced in the Project. Quality Control ensures that (i) all Design Work is done in conformance with best engineering practice and State and the DDC codes and requirements, (ii) all Construction Work means and methods result in the appropriate Work quality; and (iii) quality characteristics are measured and activities that affect production are inspected at a time when corrective action can be taken to substantially decrease the likelihood that nonconforming material will be incorporated into the Project.

<b>Quality Management Program</b>	<p>The overall program for Quality Assurance and Quality Control, to be performed in accordance with a quality management plan that consists of:</p> <ul style="list-style-type: none"><li>(a) a Design Quality Control and Assurance Plan; and</li><li>(b) a Construction Quality Control and Assurance Plan.</li></ul>
<b>RCNY</b>	<p>The Rules of the City of New York.</p>
<b>Reasonable Efforts</b>	<p>All those steps in the power of the relevant Party that can produce the desired result, being steps which a prudent, determined and reasonable Person desiring to achieve that result would take. Subject to the other express provisions of this Agreement, Reasonable Efforts does not mean that the relevant Party is required to undertake additional obligations or the expenditure of costs under this Agreement except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses).</p>
<b>Record Drawings</b>	<p>The Final Design Documents revised by the Engineer of Record or the Architect of Record (or both, as applicable) to incorporate all changes made during construction, including marked-up documents provided by the Design-Builder, and shop drawings approved or approved as noted for construction.</p>
<b>Reference Documents</b>	<p>Volume 4 (<i>Reference Documents</i>) of Exhibit 7 (<i>Project Requirements</i>).</p>
<b>Reinstatement Plan</b>	<p>Defined in Section 33.8(d).</p>
<b>Reinstatement Works</b>	<p>Defined in Section 33.8(b).</p>
<b>Release for Construction Documents</b>	<p>Each discrete package of Design Work that is 100% complete and to be used by the Design-Builder to perform the Construction Work, and includes, design drawings, specifications, technical memos, studies, calculations, independent certifications and other pertinent data, as applicable, all as Signed and Sealed by the Engineer of Record or Architect of Record and approved by the DDC.</p> <p>The Release for Construction documents must include Engineer of Record's signature or the Architect of Record's signature, as applicable, date, and seal on the documents</p>
<b>Relief Authorizations</b>	<p>Defined in Section 27.1(b).</p>
<b>Remaining Contract Price</b>	<p>Defined in Section 3.4(b)(vii)(A) of Exhibit 3 (<i>Extra Work &amp; Allowance Work Costs</i>).</p>
<b>Remedial Action</b>	<p>Any investigation, clean-up remediation or removal of a Hazardous Environmental Condition that the Design-Builder is</p>

responsible for performing under Article 12 (*Environmental Compliance, Sustainability, & LEED Certification*).

<b>Remedial Plan</b>	Defined in Section 35.3(a) ( <i>Remedial Plan for Design-Builder Default or Early Warning Trigger</i> ).
<b>Request for Modification</b>	Defined in Section 26.1(a) ( <i>Request for Proposal</i> ).
<b>Request for Proposal or RFP</b>	Defined in the Background.
<b>Request for Qualifications or RFQ</b>	Defined in the Background.
<b>Restricted Transfer</b>	Defined in Section 46(c).
<b>Retainage Amount</b>	<p>The amounts retained by the DDC from payments due to the Design-Builder in accordance with Section 24.8 (<i>Retainage</i>), without taking into account amounts:</p> <ul style="list-style-type: none"><li>(a) returned to the Design-Builder in accordance with Section 24.8 (<i>Retainage</i>); or</li><li>(b) otherwise applied by the DDC in accordance with Section 24.8 (<i>Retainage</i>).</li></ul>
<b>Retainage Percentage</b>	The percentage set out in Section 24.8(a).
<b>Review and Comment Submittal</b>	Any Submittal that is identified in the Schedule of Submittals as a Review and Comment Submittal and that is only subject to the review or comment (or both) by the DDC but is not a Mandatory DDC Approval Submittal or Deemed Approval Submittal.
<b>Rikers Island Jail Complex Replacement Act</b>	The design-build authorizing legislation enacted in 2018, as Senate Bill 7509--C.
<b>Rules</b>	Defined in Section 41.2(d).
<b>Safety Compliance</b>	Any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures with respect to the Project to correct a specific safety condition of the Project or any other City Asset that impacts the Project that the DDC has reasonably determined to exist (by investigation or analysis), including if the condition exists despite prior compliance with Safety Standards.
<b>Safety Compliance Order</b>	An order or directive from the DDC to the Design-Builder in accordance with Section 9.2 ( <i>Safety Compliance Orders</i> ) to implement Safety Compliance whether in connection with the Project or any other City Asset.
<b>Safety Standards</b>	Those provisions of the Project Requirements that are measures to protect public safety or worker safety, including Applicable Standards. Provisions of the Project Requirements primarily directed at durability of materials or equipment, where the durability

is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

<b>Schedule of Submittals</b>	Defined in Section 13.2(b).
<b>Schedule of Values</b>	The "Schedule of Values" submitted by the Design-Builder as part of its Proposal, as updated to reflect the final Contract Price.
<b>Scheduled Early Completion Date</b>	Defined in Section 23.1(a) ( <i>Early Completion Bonus</i> ).
<b>Senior Representative Negotiation</b>	Good Faith negotiations between senior executives, with decision making authority on behalf of each Party, to resolve a Dispute in accordance with Section 41.2 ( <i>Senior Representative Negotiations</i> ).
<b>Setting Date</b>	The date that is 30 days before the Proposal Date.
<b>Senior Representatives</b>	Senior executives of each Party with authority to make decisions and settle Disputes for their respective Parties.
<b>Signed and Sealed</b>	The signature and seal of the Engineer of Record or the Architect of Record, as applicable, on a document indicating that the Engineer of Record or the Architect of Record, as applicable, takes professional responsibility for the Work and, to the best of the Engineer of Record's or the Architect of Record's, as applicable, knowledge and ability, the Work represented in the document is accurate, in conformance with Applicable Law and has been prepared in conformity with Best Management Practice and with a view to the safeguarding of life, health, property and public welfare. The Engineer of Record or the Architect of Record, as applicable, certifies that the documents have been signed and sealed in accordance with the Applicable Laws of the State of New York.
<b>Site Safety Plan</b>	The Design-Builder's Site Safety Plan, conforming to or exceeding current OSHA and other requirements under Applicable Law, for protection from exposure to Hazardous Materials, as approved by the DDC.
<b>Site Validation Period</b>	The period expiring one-hundred and twenty days after the NTP 1 Date.
<b>Small Value Contract</b>	Defined in Section 24.8(c)(ii).
<b>SPDES Permit</b>	New York Pollutant Discharge Elimination System permit provided by the New York Department of Environmental Conservation to the Design-Builder for the Project, as amended.
<b>Specific Project Requirements</b>	Volume 3 ( <i>Specific Project Requirements</i> ) of the Exhibit 7 ( <i>Project Requirements</i> ).
<b>Standard Project Requirements</b>	Volume 2 ( <i>Standard Project Requirements</i> ) of Exhibit 7 ( <i>Project Requirements</i> )

<b>Staging</b>	Defined in Section 7.3(b).
<b>Stakeholders</b>	Defined in Section 5.1(b).
<b>Stakeholder Coordination Plan</b>	The comprehensive Stakeholder Coordination Plan to be developed by the DDC with respect to integrating and coordinating work to be performed under the Project with other City projects or Stakeholders, as applicable.
<b>Standards of Performance</b>	Defined in Section 7.1(b) ( <i>Requirements and Standards</i> ).
<b>State</b>	The State of New York.
<b>State Finance Law</b>	The New York State Finance Law.
<b>Subcontract</b>	Any contract, subcontract or other form of agreement between the Design-Builder, a Subcontractor and any other Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, at all tiers.
<b>Subcontractor</b>	Any Person with whom the Design-Builder has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project, and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.
<b>Submittal</b>	Any document, Work Product or other written or electronic product or item required under this Agreement (including the Project Requirements) to be delivered or submitted to the DDC for approval, review, comment or otherwise.
<b>Substantial Completion</b>	Satisfaction of all the Substantial Completion Conditions.
<b>Substantial Completion Conditions</b>	Those conditions listed in Section 16.1 ( <i>Conditions to Substantial Completion</i> ).
<b>Substantial Completion Long Stop Date</b>	The date falling on one hundred eighty days after the Guaranteed Substantial Completion Date for Substantial Completion, as may be adjusted in accordance with this Agreement.
<b>Surety</b>	The surety companies issuing the Performance Bond and the Payment Bond in connection with this Agreement.
<b>Suspension Order</b>	Defined in Section 35.4(a) ( <i>Suspension Orders</i> ).
<b>Suspension Trigger</b>	Defined in Section 36.1 ( <i>Suspension Trigger</i> ).
<b>Suspension Trigger Notice</b>	Defined in Section 36.2 ( <i>Suspension Notice</i> ).
<b>Sustainability Lead</b>	Defined in Section 12.3(b) ( <i>Sustainability Lead</i> ).
<b>Sustainable Design Manager</b>	Defined in Section 12.3(a)(iv).

<b>Temporary Access Areas</b>	Those areas identified in Exhibit 10 ( <i>Project Site</i> ) that the Design-Builder will have temporary access solely for purposes of (i) ingress and egress to the “DB Work Limit Boundary” as identified in Exhibit 10 ( <i>Project Site</i> ), (ii) performing any utility Work, and (iii) performing any other discrete and limited package of Work required under this Agreement to deliver the Project.
<b>Termination Notice</b>	Any termination notice delivered under the terms of this Agreement, including a DDC Termination Notice and Design-Builder Termination Notice.
<b>Termination Requirements</b>	Defined in Section 34.2(a).
<b>Termination Without Cause Payment</b>	Defined in Section 34.3 ( <i>Termination Without Cause Payment</i> ).
<b>Terrorism</b>	Activities against Persons or property of any nature: <ul style="list-style-type: none"><li>(a) that involve the following or preparation for the following:<ul style="list-style-type: none"><li>(i) use or threat of force or violence; or</li><li>(ii) commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system;</li></ul></li><li>(b) when one or both of the following applies:<ul style="list-style-type: none"><li>(i) it appears that the intent is to intimidate or coerce the DDC, a Governmental Entity or the civilian population or any segment of the civilian population, or to disrupt any segment of the economy;</li><li>(ii) it appears that the intent is to intimidate or coerce the DDC or a Governmental Entity, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology; and</li></ul></li><li>(c) that are criminally defined as terrorism for purposes of Applicable Law, including in New York, federally or internationally.</li></ul>
<b>Third Party Claim</b>	Any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought against an Indemnified Party by any Person that is not a party to this Agreement with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys’ fees and expenses) sustained or incurred by that Person.

<b>Time Impact Analysis</b>	Described further in Section 6.12 ( <i>Time Impact Analysis</i> ) of the Standard Project Requirements.
<b>Transfer</b>	To sell, convey, assign, sublease, mortgage, encumber, transfer or otherwise dispose of.
<b>Tribunal</b>	A court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions.
<b>UL</b>	Underwriters Laboratories
<b>Unit Item</b>	Any Allowance Work done on a Unit Price basis.
<b>Unit Price</b>	Each unit price identified, as applicable, in Section 22.4 ( <i>Allowances</i> )
<b>Unit Price Costs</b>	The Design-Builder's cost and expense for performance any Unit Price Work.
<b>Unit Price Excess Cost</b>	Defined in Section 3.1 ( <i>Unit Price Items</i> ) in Exhibit 3 ( <i>Extra Work &amp; Allowance Work Costs</i> ).
<b>Unit Price Item</b>	Each separate item or category of Unit Price Work identified under Section 22.4(b) ( <i>Unit Price Work, Construction Labor and Materials Cost Escalation and Build-Out Allowance</i> ) to be performed on a Unit Price basis.
<b>Unit Price Work</b>	Any Work performed by the Design-Builder that is compensated on a Unit Price basis and is not compensated as part of the Lump Sum Amount.
<b>Unit Price Work and Escalation Costs Allowance</b>	Defined in Section 22.4(b) ( <i>Unit Price Work and Escalation Costs</i> ).
<b>Unknown Archaeological Remains</b>	<p>Any Archaeological Remains discovered at the Project Site that, as of the Setting Date, were neither:</p> <ul style="list-style-type: none"><li>(a) known to the Design-Builder; or</li><li>(b) reasonably capable of being identified by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Best Management Practice in the same or equivalent circumstances, including through review and analysis of the Available Documents that, in each case, were available to the Design-Builder before the Setting Date.</li></ul>
<b>Unknown Endangered Species</b>	<p>Any Endangered Species discovered at the Project Site, the temporary, continual or habitual presence of which, as of the Setting Date, was neither:</p> <ul style="list-style-type: none"><li>(a) known to the Design-Builder;</li></ul>

- (b) identified or described in any applicable Governmental Approvals; or
- (c) reasonably to be expected to be found temporarily, continually or habitually at the Project Site based on review and analysis of the Available Documents that, in each case, were available to the Design-Builder before the Setting Date.

**Unknown Geotechnical Condition** Any geotechnical condition (excluding Hazardous Environmental Conditions) that materially differs from the conditions described in the Geotechnical Baseline Reports, excluding any condition that could reasonably have been anticipated, identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Best Management Practice in the same or equivalent circumstances, including through (i) the access made available to the Design-Builder prior to the Setting Date for inspection and investigation of the Project Site and (ii) review and analysis of the Geotechnical Baseline Reports (and the investigations and assumptions on the basis of which the Geotechnical Baseline Reports were prepared), and the Available Documents that, in each case, were available to the Design-Builder before the Setting Date.

**Unknown Hazardous Environmental Condition** Any Hazardous Environmental Condition that existed in, on or under a portion of the Project Site prior to the date on which the Design-Builder gains possession of a relevant portion of the Project Site and that represents a materially different condition to that described in the Available Documents or in Exhibit 7 (*Project Requirements*), excluding any Hazardous Environmental Condition that could reasonably have been identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Best Management Practice in the same or equivalent circumstances, including through (i) the access made available to the Design-Builder prior to the Setting Date for inspection and investigation of the Project Site and (ii) review and analysis of the Available Documents that, in each case, were available to the Design-Builder before the Setting Date. Unknown Geotechnical Conditions do not constitute Unknown Hazardous Environmental Conditions.

**Unknown Physical Condition** Excluding Hazardous Environmental Conditions, Unknown Geotechnical Conditions and Unknown Utility, any subsurface or physical condition that materially differs from the conditions described in the relevant Project Site condition reports included as part of the Available Documents, excluding any condition that could reasonably have been identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Best Management Practice in the same or equivalent circumstances, including through (i) the access made available to the Design-Builder prior to the Setting Date for inspection and investigation of the Project Site and (ii) review and analysis of the Available Documents, in

each case, were available to the Design-Builder before the Setting Date.

**Unknown Site Conditions**

Any site condition that the Design-Builder did not include or consider as part of its Proposal, whether or not such condition should have been anticipated or included in the Design-Builder's Proposal.

**Unknown Utility**

Any Utility present on the Project Site that was not identified or materially incorrectly shown, identified or described in the Available Documents, excluding any Utility that:

- (a) was installed on a part of the Project Site after right of entry was granted to the Design-Builder in relation to the relevant part of the Project Site in accordance with the terms of this Agreement; or
- (b) could reasonably have been identified or discovered by an appropriately qualified and experienced contractor, engineer or expert in the field exercising due care and skill and Best Management Practice in the same or equivalent circumstances through (i) the access made available to the Design-Builder prior to the Setting Date for inspection and investigation of the Project Site and (ii) review and analysis of Available Documents and any public information that, in each case, were available to the Design-Builder before the Setting Date.

**USGBC**

The U.S. Green Building Council, a private 501(c)3, membership-based non-profit organization that promotes sustainability in how buildings are designed, built and operated.

**Utility**

A privately, publicly, or cooperatively owned line, facility, or system (including conduits and concrete structures in which utility lines are contained) for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with the highway drainage, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The necessary appurtenances to each Utility facility will be considered part of that Utility.

**Utility Owner**

The owner or operator of any Utility, including both privately held and publicly held entities, cooperative Utilities and municipalities and other government agencies.

**Utility Relocation**

The removal, relocation or protection in place (including provision of temporary services) of any and all Utilities that must be removed, relocated or protected in place to undertake the Work.

**Value Engineering Proposal**

A proposal developed and documented by the Design-Builder which (A) produces a net savings to the DDC without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all Governmental Approvals);

and (B) would modify or require a change in any of the requirements of or constraints set forth in the Contract Documents in order to be implemented. A Value Engineering Proposal cannot be based solely upon a change in quantities.

**Warehouse**

Defined in Section 24.3(b)(ii).

**Warranty Period**

Defined in Section 30.1 (*Warranty Period*).

**WBE or Women-owned Business Enterprise**

Defined in Exhibit 14 (*M/WBE Requirements*).

**Work**

The Design Work and the Construction Work and all other work, services and obligations required to be furnished, performed and provided by the Design-Builder or any Design-Builder Party under and in connection with this Agreement, including Demolition Work, as may be necessary or foreseeable to achieve Substantial Completion and Final Completion of the Project and satisfy all the DDC claims and Design-Builder obligations during the Warranty Period or latent defects period.

**Work Product**

All drawings, data, photographs, specifications, calculations, reports, studies, notes or any other Submittal or documentation, whether in paper or electronic form, produced by or on behalf of the Design-Builder in connection with the Project.

**EXHIBIT 2**

**Initial Designation of Authorized Representatives**

<b>DDC Representative</b>	<b>Design-Builder Representative</b>
Rebecca Clough, Associate Commissioner NYC Dept. of Design and Construction 3030 Thomson Avenue Long Island City, NY 11101 718-391-1127 <a href="mailto:clough@ddc.nyc.gov">clough@ddc.nyc.gov</a>  The Commissioner of DDC and the Deputy Commissioner for Public Buildings are also DDC Representatives for purposes of this Agreement.	James McKenna, Manager, President & CEO Hunter Roberts Construction Group, LLC 55 Water Street New York, NY 10041 212-321-6800 <a href="mailto:jmckenna@hrcg.com">jmckenna@hrcg.com</a>

**DDC Representative Authorities:**

The DDC Representative identified above will have the authority to exercise all powers, rights and obligations under this Agreement on behalf of DDC, subject to Applicable Law and any limitations set forth in this Agreement or in a later issued notice. This authority includes, without limitation, the authority to execute Change Orders, Allowance Approvals in connection with Delay Events, issue Safety Compliance Orders or stop Work orders.

All Change Orders and Completion Extensions are subject to the final review and approval of the Agency Chief Contracting Officer. Payment Requisitions are subject to engineering audit by the Engineering Audit Officer.

In addition, without limiting the authority of the DDC Representative, the DDC will identify additional authorized Persons in its NTP 1, including day-to-day Project representatives, to exercise general and specific authorities under the Agreement (e.g., review of Payment Requisitions, design reviews).

**Design-Builder Representative Authorities:**

The Design-Builder Representative is authorized to make decisions and bind the Design-Builder on matters relating to the Contract Documents.

### EXHIBIT 3

#### Extra Work & Allowance Work Costs

#### 1. GENERALLY

##### 1.1 Options for Calculating Extra Work or Allowance Work Compensation

Where the DDC is required to pay the Design-Builder for Allowance Work, Extra Work or for its Net Costs in connection with a Compensable Delay Event, Allowance Approval or Change Order, as applicable, such compensation may be agreed between the Parties in one or more of the following ways:

- (a) in connection with a Unit Item, by the applicable Unit Prices specified in this Agreement;
- (b) by agreement of a fixed price or lump sum;
- (c) by time and material records;
- (d) in any other manner approved by the CCPO; or
- (e) or any combination of (a)-(d).

1.2 To the extent the Parties negotiate and work to agree to a fixed price or lump sum, the Parties must derive any negotiated amount by utilizing the calculations and values included in this Exhibit as a basis for calculating a fair and reasonable fixed price or lump sum. Where the Parties do not otherwise agree in writing to a fixed price or lump sum compensation for any portion of the applicable Allowance Work or Extra Work, such compensation will be calculated in accordance with Sections 2 and 3 below.

1.3 Negotiated Change Orders or Allowance Approvals which are connected to Unit Prices will be negotiated and include all costs for labor, material, overhead and profit.

#### 2. DESIGN WORK

Notwithstanding anything to the contrary in Section 3 (*Construction Work*) below, the cost for Net Costs, Extra Work or Allowance Work, as applicable, consisting of Design Work will be an amount equal to the salaries paid to technical employees for time actually spent performing the Extra Work or Allowance Work, plus 6% overhead and profit.

#### 3. CONSTRUCTION WORK

##### 3.1 Unit Price Items

- (a) In the performance of the Work, the Design-Builder will be paid at the Unit Price identified in the Schedule of Values for the applicable Unit Price Work up to one hundred twenty-five percent of the Baseline Unit Price Cost. If during the progress of the Unit Price Work the Unit Price Cost required to complete the Unit Price Work for any Unit Price Item approaches the Baseline Unit Price Cost, and for any reason it is reasonably determined by either Party that the actual Unit Price Cost necessary to complete the Unit Price Work will exceed the

Baseline Unit Price Cost by twenty-five percent (a “**Unit Price Excess Cost**”), such Party, must promptly notify the other Party of such Unit Price Excess Cost.

- (b) Upon receipt of any notice of a Unit Price Excess Cost, the Parties must promptly meet and either (i) confirm the existing Unit Price for the applicable Unit Price Item, or (ii) negotiate a new Unit Price, as may be appropriate (in the DDC’s discretion) at such time.
- (c) If the Parties cannot agree on a new Unit Price, then the DDC may direct the Design-Builder to perform the applicable Unit Price Work on the basis of time and material records subject to the limitations in this Exhibit for the actual and reasonable cost, but in no event at a Unit Price exceeding the Unit Price included in the Schedule of Values.

### 3.2 **Construction Work Net Costs**

For Extra Work or Allowance Work (excluding any Unit Price Work), where payment is based on time and material records, the price to be paid for such Extra Work or Allowance Work will be the actual and reasonable cost of the items described below, calculated in accordance with the following formulas, as applicable:

- (a) **Materials** - Necessary materials (including transportation to the Project Site); plus
- (b) **Labor** - Necessary direct labor, including payroll taxes (subject to statutory wage caps) and supplemental benefits; plus
- (c) **Taxes** - Sales and personal property taxes, if any, required to be paid on materials not incorporated into such Extra Work; plus
- (d) **Rental Value of DB Owned Equipment** - Reasonable rental value of Design-Builder-owned (DB Member or Subcontractor-owned, as applicable), necessary plant and equipment other than Small Tools, plus fuel and energy costs. Except for fuel costs for pick-up trucks which will be reimbursed based on a consumption of five gallons per shift, fuel costs will be reimbursed based on actual costs or, in the absence of auditable documentation, using the following fuel consumption formula per operating hour:  $(.035) \times (\text{HP rating}) \times (\text{fuel cost per gallon})$ . Reasonable rental value is defined as the lower of either seventy-five percent of the monthly prorated rental rates established in “The AED Green Book, Rental Rates and Specifications for Construction Equipment” published by Equipment Watch (the “**Green Book**”), or seventy-five percent of the monthly prorated rental rates established in the “Rental Rate Blue Book for Construction Equipment” published by Equipment Watch (the “**Blue Book**”) (the applicable Blue Book rate being for rental only without the addition of any operational costs listed in the Blue Book). The reasonable rental value is deemed to be inclusive of all operating costs except for fuel and energy consumption and equipment operator’s wages and costs. For multiple shift utilization, reimbursement will be calculated as follows:
  - (i) first shift will be seventy-five (75%) percent of such rental rates;
  - (ii) second shift will be sixty (60%) percent of the first shift rate; and
  - (iii) third shift will be forty (40%) percent of the first shift rate.
- (e) **Standby-Equipment** - Equipment on standby must be reimbursed at one-third the prorated monthly rental rate. Design-Builder-owned (DB Member-owned or Subcontractor-

owned, as applicable) equipment includes equipment from rental companies affiliated with or controlled by the Design-Builder (DB Member or a Subcontractor, as applicable), as determined by the DDC. In establishing cost reimbursement for non-operating Design-Builder-owned (DB Member-owned or Subcontractor-owned, as applicable) equipment (scaffolding, sheeting systems, road plates, etc.), the DDC may restrict reimbursement to a purchase-salvage and life cycle basis if less than the computed rental costs; plus

- (f) **Installation & Dismantling** - necessary installation and dismantling of such plant and equipment, including transportation to and from the Project Site, if any, provided that, in the case of non-Design-Builder-owned (non-DB Member-owned or non-Subcontractor-owned, as applicable) equipment rented from a third party, the cost of installation and dismantling are not allowable if such costs are included in the rental rate; plus
- (g) **Governmental Fees** - necessary fees charged by governmental entities; plus
- (h) **Non-Governmental Fees** - necessary construction-related service fees charged by non-governmental entities; plus
- (i) **Rental Value of Non-DB Owned Equipment** - Reasonable rental costs of non-Design-Builder-owned (non-DB Member-owned or non-Subcontractor-owned, as applicable) necessary plant and equipment other than Small Tools, plus fuel/energy costs. Except for fuel costs for pick-up trucks which will be reimbursed based on a consumption of five gallons per shift, fuel costs will be reimbursed based on actual costs or, in the absence of auditable documentation, the following fuel consumption formula per hour of operation:  $(.035) \times (\text{HP rating}) \times (\text{Fuel cost/gallon})$ . Instead of renting, the DDC reserves the right to direct the Design-Builder to purchase non-operating equipment (scaffolding, sheeting systems, road plates, etc.), with payment on a purchase-salvage and life cycle basis, if less than the projected rental costs; plus
- (j) **Insurance** - workers' compensation insurance, and any insurance coverage expressly required by the DDC for the performance of the Extra Work or Allowance Work (excluding Unit Price Work) which is different or additional than the types of insurance required by Exhibit 6 (*Insurance Coverage Requirements*). The cost of workers' compensation insurance is subject to applicable payroll limitation caps and will be based upon the carrier's manual rate for such insurance derived from the applicable class loss cost and carrier's lost cost multiplier approved by the New York State Department of Financial Services, and with the exception of experience rating, rate modifiers as promulgated by the New York Compensation Insurance Rating Board; plus
- (k) **Performance Security** - Incremental costs incurred for increases to the Performance Bonds and Payment Bonds procured solely by the Design-Builder that are caused by the Extra Work under a Change Order; plus
- (l) **Overhead** - Twelve percent of the total of items in Sections 3.2(a) through 3.2(f), as compensation for overhead, except that no percentage for overhead will be allowed on payroll taxes or on the premium portion of overtime pay or on sales and personal property taxes. Overhead will include without limitation, all costs and expenses in connection with administration, management superintendence, Small Tools, and insurance required by this Agreement, other than workers' compensation insurance; plus
- (m) **Profit** - Ten percent of the total of items in Sections 3.2(a) through 3.2(f), plus the items in 3.2(l), as compensation for profit, except that no percentage for profit will be allowed on

payroll taxes or on the premium portion of overtime pay or on sales and personal property taxes; plus

- (n) **Overhead & Profit** - Five percent of the total of items in Sections 3.2(g) through 3.2(k) as compensation for overhead and profit.

For purposes of this Agreement, “**Small Tools**” are items that are ordinarily required for a worker’s job function, including, equipment that ordinarily has no licensing, insurance or substantive storage costs associated with it; such as circular and chain saws, impact drills, threaders, benders, wrenches, socket tools, etc.

### 3.3 **Additional Overhead and Profit**

Where the Extra Work or Allowance Work (excluding Unit Price Work), as applicable, is performed in whole or in part by any Subcontractors (excluding DB Members) pursuant to Section 3.2 (*Construction Work Net Costs*), the Design-Builder must be paid, subject to pre-audit by the DDC, the cost of such Work (excluding the cost of any Subcontractor performance bond or payment bond) computed in accordance with Section 3.2 (*Construction Work Net Costs*) above, plus an additional allowance of five percent for the Design-Builder’s overhead and profit.

### 3.4 **Net Costs for Compensable Delay Events**

Net Costs incurred or to be incurred by the Design-Builder will be calculated in accordance with the following:

- (a) **Extra Work or Allowance Work**

To the extent the Design-Builder performs any Extra Work or Allowance Work in connection with a Compensable Delay Event, then any applicable Allowance Approval or Change Order will, to the extent applicable, be calculated utilizing Sections 1 (*Generally*) through 3 (*Construction Work*) above.

- (b) **Delay Damages**

To the extent the Design-Builder incurs or will incur Net Costs in connection with a delay to the Project Schedule caused by a Compensable Delay Event and such amounts are not otherwise covered under Section 3.4(a) above, any such Net Costs under a Change Order or Allowance Approval will be calculated utilizing the following:

- (i) all costs under Sections 3.2(a) (*Materials*), 3.2(b) (*Labor*), 3.2(d) (*Rental Value DB Owned Equipment*), 3.2(e) (*Standby Equipment*), 3.2(f) (*Installation & Dismantling*), 3.2(i) (*Rental Value of Non-DB Owned Equipment*) and 3.2(j) (*Insurance*);
- (ii) labor escalation costs based on actual costs;
- (iii) materials and equipment escalation costs based on applicable indices, including the applicable Unit Price indices (where applicable), or documentation of actual increased costs is provided. However, for any Escalation Items, escalation costs will only be provided to the same extent the Design-Builder will otherwise be entitled to an Allowance Payment Request for any such Escalation Items for any Escalation Year under, and in accordance with, Section 22.4 (*Allowances*);

- (iv) additional actual material and equipment storage costs based on actual documented costs and additional costs necessitated by extended manufacturer warranty periods;
- (v) fees paid to service providers for required field office rental, utility charges, potable water, sanitation, cleaning, and other related charges, plus a five percent Design-Builder service fee for contract supervision, overhead and profit; and
- (vi) documented additional or escalated Project Site overhead costs during the delay period, including superintendent, office engineer, clerical staff, but not including working foremen or any costs covered under Section 3.4(b)(v) above.

### 3.5 **Open Book Basis**

All pricing, estimating and negotiations of any Extra Work costs or Net Costs under this Exhibit will be done on an Open Book Basis. Open Book Basis means allowing the DDC to review all underlying assumptions and data associated with each request for compensation in accordance with a Compensable Delay Event, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, and other items reasonably required by the DDC to satisfy itself as to the reasonableness and accuracy of the amount.

### 3.6 **No Double Counting**

- (a) No double-counting of any amounts, profits or overhead amounts will be permitted as between the application of any provision in this Exhibit, including Sections 2 (Design Work), Section 3.2 (Construction Work Net Costs), Section 3.3 (Additional Overhead and Profit) and Section 3.4 (Net Costs for Compensable Delay Events).
- (b) The Design-Builder will not be entitled to any additional compensation for any delay or Extra Work or any Net Costs not expressly contemplated or provided for in this Exhibit, including costs, losses or damages which it might otherwise be entitled to claim under Applicable Law.

### 3.7 **Non-Recoverable Costs**

The City will not have any liability in connection with a Compensable Delay Event, Change Order or Allowance Approval for any of the following:

- (i) profit, or loss of anticipated or unanticipated profit, except as provided in Sections 3.2(m), 3.2(n), 3.3, and 3.4(b)(vii)(D);
- (ii) consequential or indirect damages, including, construction or bridge loans or interest paid on such loans, loss of bonding capacity, bidding opportunities, or interest in investment, or any resulting insolvency; and
- (iii) attorneys' fees and dispute and claims preparation expenses.

## 4. **OMITTED WORK**

### 4.1 **Reduction in Contract Price**

(a) **Lump Sum Amount**

If any Work is omitted by the DDC pursuant to a Change Order or DDC Directive, the Lump Sum Amount, subject to audit by the EAO, will be reduced by a pro rata portion of the lump sum bid amount based upon the percent of Work omitted subject to Section 4.1(d).

(b) **Allowances**

If any Allowance is omitted in whole or in part, then such amount will be reduced proportionally by the percentage omitted by the DDC.

(c) **Unit Price**

For Unit Items that have been ordered but are only partially completed, the applicable Allowance will be reduced by a pro rata portion of the Baseline Unit Price Cost omitted subject to Section 4.1(d).

(d) **Non-Cancelable Material**

In the event the Design-Builder, with respect to any omitted Work, has purchased any non-cancelable material or equipment, or both, that is not capable of use except in the performance of the Agreement and has been specifically fabricated for the sole purpose of the Agreement, but not yet incorporated into the Work, the Design-Builder will be paid for such material or equipment in accordance with Section 34.3(a)(ii) of the Agreement; provided, however, such payment will be contingent upon the Design-Builder's delivery of such material or equipment, or both, in acceptable condition to a location designated by the DDC.

(e) **Lost Overhead or Profit**

The Design-Builder agrees to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

5. **RESTRICTIONS ON COMPENSATION**

The Design-Builder's compensation under this Exhibit excludes the following costs:

- (a) amounts paid or to be paid to Affiliates in excess of the pricing the Design-Builder could reasonably obtain in an arm's length, competitive transaction with an unaffiliated contractor;
- (b) costs incurred in asserting, pursuing or enforcing any Claim or Dispute, other than those expressly permitted in this Exhibit; and
- (c) any other costs or expenses otherwise impermissible under the City Comptroller's Directive #2.

6. **RECORDS**

- (a) Whenever any Extra Work or Allowance Work in connection with a Change Order or Allowance Approval is performed (whether by the Design-Builder directly or through a DB

Member or Subcontractor), the Design-Builder must, at the end of each day, submit to the DDC (for verification by the DDC):

- (i) daily time slips showing the name and number of each worker employed on the Extra Work or Allowance Work, the number of hours that the worker is employed on the Extra Work or Allowance Work, the character of their duties, and the wages actually paid to the worker. The Design-Builder must complete, sign and deliver to the DDC the time slips individually and sequentially numbered for all applicable Work performed by the Design-Builder, any DB Member and any Subcontractors;
  - (ii) a memorandum showing the rates and amounts of workers' compensation insurance premiums, if any, and state and federal taxes based on these wages, and vacation allowances and union dues and assessments, which the employer actually pays in accordance with contractual obligations based on these wages;
  - (iii) a memorandum showing the amount and type of the materials furnished for the Extra Work or Allowance Work, as applicable, from whom they were purchased and the amount to be paid for the materials; and
  - (iv) a memorandum of equipment used in the performance of the Extra Work or Allowance Work, listing the actual hours of operation for each piece of equipment, together with the rental claimed for each piece of equipment.
- (b) The DDC will provide templates for the time slips to the Design-Builder before commencement of the Work.
- (c) These memoranda and time slips are for the purpose of enabling the DDC to determine the amounts to be paid by the DDC under this Exhibit and, accordingly, they constitute a condition precedent to the applicable payment. The failure of the Design-Builder to furnish these memoranda and time slips with respect to any applicable Work will constitute a conclusive and binding determination that the applicable Work is not Extra Work or Allowance Work and will constitute a waiver by the Design-Builder of claims for payment for such Work.

## EXHIBIT 4

### Award Fee Program

#### 1. PURPOSE

The purpose of an award fee program is to provide a mechanism to incentivize the Design-Builder to provide exceptional performance in critical areas that are a high-priority for the City and may be susceptible to qualitative evaluation. Award fees are for exceptional performance, not for satisfactory performance. Any award fees are above and beyond the Lump Sum Amount, and will only be paid for performance deemed exceptional by the DDC and any award fee determination officer (“**AFDO**”). Award fees are not guaranteed, may never be paid and must not be accounted for by the Design-Builder when pricing its Proposal for the Project.

#### 2. AWARD FEE PLAN

##### 2.1 Generally

Upon notice to the Design-Builder, the Design-Builder and DDC will develop and agree on an award-fee plan the (“**AF Plan**”). The AF Plan may take into consideration any preliminary award fee plan submitted by the Design-Builder and the Parties will work toward finalizing the AF Plan within one-hundred days following DDC’s notice.

##### 2.2 DDC Rights

The methodology for determining an award fee will be developed collaboratively with the DDC and the Design-Builder; provided, that final decisions regarding (i) whether an award fee program will be utilized, and (ii) whether to grant an award-fee, will be made in DDC’s sole discretion. Such determinations by DDC are final and non-reviewable, including by the Disputes Review Board.

##### 2.3 Ratings

Evaluation criteria may be rated based on various discrete rating categories to be developed and further defined as part of the AF Plan, and may include unsatisfactory performance, satisfactory performance, good performance, very good performance and exceptional performance.

**EXHIBIT 5**  
**Schedule of Values**

# Borough-Based Jails Program

9/18/2020  
Rev 12/18/2020

**Hunter Roberts  
Construction Group**  
- Values shown for information  
for proposal evaluation  
purposes only

## Schedule of Values - Form J-2

**NYC Department of Design and Construction**

**Queens Site Parking Garage**

**TOTAL CONSTRUCTION COST**  
Summary by Project Elements (Using UniFormat  
Classification)

**Total (\$)**

**DESCRIPTION**

<b>A10</b>	<b>FOUNDATIONS</b>			
A1010	Standard Foundations		\$	11,679,890
A1020	Special Foundations			Included
A1030	Slab On Grade			Included
<b>A20</b>	<b>BASEMENT CONSTRUCTION</b>			
A2010	Basement Construction			w/ Foundations
A2020	Basement Walls			w/ Foundations
<b>B10</b>	<b>SUPERSTRUCTURE</b>			
B1010	Floor Construction		\$	19,341,462
B1020	Roof Construction			Included
<b>B20</b>	<b>EXTERIOR CLOSURE</b>			
B2010	Exterior Walls		\$	3,698,587
B2020	Exterior Windows		\$	1,135,000
B2030	Exterior Doors			Included
<b>B30</b>	<b>ROOFING</b>			
B3010	Roof Coverings		\$	730,200
B3020	Roof Openings			Included
<b>C10</b>	<b>INTERIOR CONSTRUCTION</b>			
C1010	Partitions		\$	2,355,313
C1020	Interior Doors		\$	72,008
C1030	Fittings			Included
<b>C20</b>	<b>STAIRS</b>			
C2010	Stair Construction			w/ Superstructure
C2020	Stair Finishes			w/ Superstructure

<b>Borough-Based Jails Program</b>				9/18/2020 Rev 12/18/2020
<b>Schedule of Values - Form J-2</b>				<b>Hunter Roberts Construction Group</b> - Values shown for information for proposal evaluation purposes only
		<b>NYC Department of Design and Construction</b>		
		<b>Queens Site Parking Garage</b>		
<b>TOTAL CONSTRUCTION COST Summary by Project Elements (Using UniFormat Classification)</b>				<b>Total (\$)</b>
<b>DESCRIPTION</b>				
<b>C30</b>	<b>INTERIOR FINISHES</b>			
C3010	Wall Finishes		\$	820,324
C3020	Floor Finishes			Included
C3030	Ceiling Finishes			Included
<b>D10</b>	<b>CONVEYING</b>			
D1010	Elevators		\$	1,353,000
<b>D20</b>	<b>PLUMBING</b>			
D2010	Plumbing Fixtures		\$	1,728,050
D2020	Domestic Water Distribution			Included
D2030	Sanitary Waste			Included
D2040	Rain Water Drainage			Included
D2090	Other Plumbing Systems			Included
<b>D30</b>	<b>HVAC</b>			
D3010	Energy Supply		\$	2,222,500
D3020	Heat Generating Systems			Included
D3030	Cooling Generating Systems			Included
D3040	Distribution Systems			Included
D3050	Terminal Package Units			Included
D3060	Controls & Instrumentation			Included
D3070	Systems Testing and Balancing			Included
D3090	Other HVAC Systems & Equipment			Included
<b>D40</b>	<b>FIRE PROTECTION</b>			
D4010	Sprinklers		\$	720,000
D4020	Standpipes			Included
D4030	Fire Protection & Specialties			Included
D4090	Other Fire Protection Systems			Included

<b>Borough-Based Jails Program</b>				9/18/2020 Rev 12/18/2020
<b>Schedule of Values - Form J-2</b>				<b>Hunter Roberts Construction Group</b> - Values shown for information for proposal evaluation purposes only
		<b>NYC Department of Design and Construction</b>		
		<b>Queens Site Parking Garage</b>		
<b>TOTAL CONSTRUCTION COST Summary by Project Elements (Using UniFormat Classification)</b>				<b>Total (\$)</b>
<b>DESCRIPTION</b>				
<b>D50</b>	<b>ELECTRICAL</b>			
D5010	Electrical Service and Distribution		\$	9,747,742
D5020	Lighting & Branch Wiring			Included
D5030	Fire Alarm and Alarm Detection			Included
D5090	Other Electrical Devices			Included
<b>E10</b>	<b>EQUIPMENT</b>			
E1010	Vehicle and Pedestrian Equipment		\$	449,086
E1030	Commercial Equipment			Not Required
E1040	Other Equipment		\$	74,500
<b>E20</b>	<b>FURNISHINGS</b>			
E2010	Fixed Furnishings		\$	15,000
E2020	Moveable Furnishings			Not Required
<b>F10</b>	<b>SPECIAL CONSTRUCTION</b>			
F1010	Integrated Construction			Not Required
F1020	Special Structures			Not Required
F1030	Special Function Construction			Not Required
<b>F20</b>	<b>SELECTIVE BUILDING DEMOLITION</b>			
F2010	Building Elements Demolition			Not Required
F2020	Hazardous Components Demolition			Not Required
<b>G10</b>	<b>SITE PREPERATION</b>			
G1010	Site Clearing		\$	4,037,150
G1020	Site Demolition & Relocations			Included
G1030	Site Earthwork			Included
G1040	Hazardous Waste Remediation			w/ Owner Allowance

<b>Borough-Based Jails Program</b>				9/18/2020 Rev 12/18/2020
<b>Schedule of Values - Form J-2</b>				<b>Hunter Roberts Construction Group</b> - Values shown for information for proposal evaluation purposes only
		<b>NYC Department of Design and Construction</b>		
		<b>Queens Site Parking Garage</b>		
<b>TOTAL CONSTRUCTION COST Summary by Project Elements (Using UniFormat Classification)</b>				<b>Total (\$)</b>
<b>DESCRIPTION</b>				
<b>G20</b>	<b>SITE IMPROVEMENTS</b>			
G2010	Roadways			\$ 543,350
G2020	Parking Lots			Included
G2030	Pedestrian Paving			Included
G2040	Site Development			Included
G2050	Landscaping			\$ 423,635
<b>G30</b>	<b>LIQUID AND GAS SITE UTILITIES</b>			
G3010	Water Utilities			\$ 714,750
G3020	Sanitary Sewerage Utilities			Included
G3030	Storm Drainage Utilities			Included
G3090	Liquid and Gas Site Utilities Supplementary Components			Included
<b>G40</b>	<b>ELECTRICAL SITE IMPROVEMENTS</b>			
G4010	Site Electric Distribution Systems			w/ Electrical
G4050	Site Lighting			w/ Electrical
G4090	Other Site Electrical Utilities			w/ Electrical
<b>G50</b>	<b>SITE COMMUNICATIONS</b>			
G5010	Site Communications Systems			Not Required
<b>G90</b>	<b>OTHER SITE CONSTRUCTION</b>			
G9090	Other Site Systems & Equipment			Not Required
<b>Z10</b>	<b>GENERAL REQUIREMENTS</b>			
Z1070	Mobilization			\$ 2,656,777
	<i>Not including any P&amp;P Bond, Builder's Risk and GLI</i>			
<b>SUBTOTAL</b>			<b>A</b>	<b>\$ 64,518,324</b>
<b>Z GENERAL CONDITIONS (except as itemized above and below)</b>			<b>B</b>	<b>\$ 4,301,303</b>

<b>Borough-Based Jails Program</b>				9/18/2020 Rev 12/18/2020
<b>Schedule of Values - Form J-2</b>				<b>Hunter Roberts Construction Group</b> - Values shown for information for proposal evaluation purposes only
<b>NYC Department of Design and Construction</b>				
<b>Queens Site Parking Garage</b>				
<b>TOTAL CONSTRUCTION COST</b> Summary by Project Elements (Using UniFormat Classification)				<b>Total (\$)</b>
<b>DESCRIPTION</b>				
<b>SUBTOTAL DIRECT (2020 Dollars)</b>			<b>C</b>	<b>\$ 68,819,627</b>
<b>Z70 Bonds - e.g. Performance and Payment</b>		<b>%</b>	<b>D</b>	<b>\$ 740,000</b>
<i>Included in Mobilization Payment</i>				
<b>Z70 Insurance - e.g. General Liability and Builder's Risk</b>			<b>E</b>	<b>\$ 1,433,200</b>
<i>Included in Mobilization Payment</i>				
<b>TOTAL CONSTRUCTION</b>			<b>F</b>	<b>\$ 70,992,827</b>
<b>Design (includes Engineering, Architecture, Insurance, and Overhead)</b>				
<b>TOTAL DESIGN</b>			<b>G</b>	<b>\$ 2,989,500</b>
<b>TOTAL DESIGN AND CONSTRUCTION COST</b>			<b>H</b>	<b>\$ 73,982,327</b>
Must Equal Total Proposal Estimate				



HRCG MOBILIZATION COST BREAKDOWN		12/18/20
HRCG Precon Staff	\$	675,077
A/E Consultant Costs	\$	750,000
Expeditor / Permitting	\$	20,000
Support of Excavation - Design	\$	50,000
Precast Garage (Engineering/Shop drawings)	\$	250,000
Scheduling Consultant	\$	20,000
Subcontractor Default Insurance	\$	891,700
<b>MOBILIZATION COST BREAKDOWN TOTAL:</b>		<b>\$ 2,656,777</b>
P&P Bond	\$	740,000
Builders Risk	\$	96,200
GLI	\$	1,337,000
<b>MOBILIZATION COST W/ INSURANCE, P&amp;P BOND:</b>		<b>\$ 4,829,977</b>

**EXHIBIT 6**

**Insurance Coverage Requirements**

The following policies of insurance must be obtained and kept in force during the Project, in accordance with this Exhibit 6. At the Design-Builder’s option, the Design-Builder may provide any or all of the following Insurance Policies by means of a Wrap-Up Contractor Controlled Insurance Program (“**CCIP**”), provided all terms, conditions, and requirements of this Exhibit 6 are met.

<b>Policy</b>	<b>Minimum Limit and Sub-limits</b>	<b>Named Insured</b>	<b>Additional Insureds</b>	<b>Loss Payees</b>	<b>Principal Cover/ Principal Exclusions/ Extensions of Cover</b>	<b>Maximum Deductible/ Retention</b>	<b>Project Specific</b>
Commercial General Liability Insurance (“ <b>CGL</b> ”)	(a) if DOB permits are not required:  (i) \$2,000,000 each occurrence  (ii) \$4,000,000 annual aggregate  (iii) \$4,000,000 completed operations Aggregate; or  (b) if DOB permits are required, the amounts set forth in (a) above or required under RCNY 101-08, whichever is greater.	Design-Builder	City of New York, its officials and employees and any other parties as required in this agreement	Design-Builder	Insures for claims arising out of third-party bodily injury (including death), personal injury and property damage arising out of on-site and off-site operations. Six years of completed operations coverage required.	Commercially reasonable deductibles	Yes

Policy	Minimum Limit and Sub-limits	Named Insured	Additional Insureds	Loss Payees	Principal Cover/ Principal Exclusions/ Extensions of Cover	Maximum Deductible/ Retention	Project Specific
Builder's Risk Insurance	The Contract Price plus value of subsequent Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles	Design-Builder, City of New York, additional insured or loss payee as its interests may appear and other parties as required.	TBD	Design-Builder, City of New York, or other entities as required by this agreement	Insures cost of repairs and delay in revenues due to loss or damage to the asset during construction (from insured perils).	\$250,000 AOP  \$500,000 for flood, earthquake	Yes
Workers Compensation, Disability Benefits and Employers' Liability Insurance	Workers Compensation and Employers Liability Insurance as prescribed by Applicable Law: \$2,000,000	Design-Builder	N/A	Design-Builder	Insures all work-related injuries for employees. As prescribed by Applicable Law.	The policy may include commercially reasonable deductibles to the extent permitted by Applicable Law	N/A
Commercial Automobile Liability Insurance	\$5,000,000 for each accident	Design-Builder	City of New York, its officials and employees and any other	Design-Builder	Provides coverage for claims arising out of third party bodily injury and property damage arising out of use of licensed automobiles or vehicles. If vehicles are used for	Per Market Practice	N/A

Policy	Minimum Limit and Sub-limits	Named Insured	Additional Insureds	Loss Payees	Principal Cover/ Principal Exclusions/ Extensions of Cover	Maximum Deductible/ Retention	Project Specific
			parties as required in this agreement		transporting hazardous materials, the Design-Builder will provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.		
Professional Liability Insurance	\$5,000,000 per claim and in the aggregate	Design-Builder	Not Applicable	Design-Builder	Provides coverage for claims for damages arising from a breach of professional duty in the performance of professional services rendered. Includes 5 year extended reporting period. Retroactive date aligned with date of commencement of Work on the Project.	\$1,000,000	N/A
Director's & Officers Liability, Crime, Employment Practices Liability (EPL)	\$1,000,000 per occurrence and in the aggregate	Design-Builder	Not Applicable	Design-Builder	Insures for claims against the directors & officers of the insured alleging breach of duty, neglect, error or omission in their capacity as such director or officer.	\$50,000	N/A
Cyber Liability, Network Security and Data Breach Insurance	\$1,000,000 each occurrence and in the aggregate	Design-Builder	City of New York, its officials and employees and any other parties as required in	Design-Builder	Insures for privacy violation, information theft, damage, alteration or destruction to electronic information, release of private information, extortion and network security.	\$100,000	N/A

Policy	Minimum Limit and Sub-limits	Named Insured	Additional Insureds	Loss Payees	Principal Cover/ Principal Exclusions/ Extensions of Cover	Maximum Deductible/ Retention	Project Specific
			this agreement				
Excess or Umbrella Liability Insurance	\$50,000,000 each occurrence and in the aggregate	Design-Builder	City of New York, its officials and employees and any other parties as required in this agreement	Design-Builder	Follow form excess coverage of commercial general liability and automobile liability coverage.	No deductible or retention should apply	Yes
Not Applicable to Queens Garage Project  Railroad Protective Insurance	<del>\$6,000,000 each occurrence and in the aggregate</del>	<del>Rail entity within proximity to the project as required by this Agreement.</del>	<del>City of New York, its officials and employees and any other parties as required in this agreement</del>	<del>Rail entity within proximity to the project as required by this Agreement.</del>	<del>Coverage for third party liability in the name of the applicable rail entity within fifty feet of the Project</del>	<del>\$50,000</del>	<del>Yes</del>
Environmental Liability Insurance	\$10,000,000 per occurrence and in the aggregate.	Design-Builder	City of New York, its officials and employees and any other parties as required in this agreement	Design-Builder	Insures for claims arising out of pollution conditions released by, transported by, disposed of or resulting from construction operations. Coverage must include: <ul style="list-style-type: none"> <li>• 3<sup>rd</sup> Party Bodily Injury, Property Damage and Clean-up Costs.</li> <li>• 1<sup>st</sup> &amp; 3<sup>rd</sup> Party Transportation</li> <li>• Non-Owned Disposal Sites</li> </ul>	\$250,000	Yes

Policy	Minimum Limit and Sub-limits	Named Insured	Additional Insureds	Loss Payees	Principal Cover/ Principal Exclusions/ Extensions of Cover	Maximum Deductible/ Retention	Project Specific
					<ul style="list-style-type: none"> <li>• Mold &amp; Microbial Matter</li> <li>• Bioterrorism</li> <li>• 10 years Completed Operations</li> <li>• Loss of use of damaged property or property not physically injured</li> </ul>		
Marine Protection and Indemnity Insurance	Commercially reasonable amounts, only if the Design-Builder engages in marine operations in the execution of any part of the Work, the Design-Builder must maintain, or cause the Subcontractor doing such Work to maintain	Design-Builder	City of New York, its officials and employees and any other parties as required in this Agreement	Design-Builder	At least as broad as Form SP-23.	N/A	

**1.1 Insurers**

**(a) Minimum Rating**

The Design-Builder must ensure that all Insurance Policies are obtained from insurers that have an A.M. Best rating of at least A- / VII, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of at least A3, or a similar rating by any other nationally recognized statistical rating organization acceptable to the City Corporation Counsel unless prior written approval is obtained from the City Corporation Counsel.

**(b) Ratings Change**

If an insurer providing any of the Insurance Policies required by this Agreement:

- (i) becomes the subject of bankruptcy proceedings;
- (ii) has its rating downgraded below the minimum rating referred to in Section 1.1(a);
- (iii) becomes insolvent; or
- (iv) is the subject of an order or directive limiting its business activities given by any Governmental Entity (including the New York State Department of Financial Services),

the Design-Builder must promptly (but no later than thirty days), and at its own cost and expense, secure alternative coverage in compliance with the insurance requirements in this Exhibit in order to avoid a default under this Agreement.

## 1.2 General Insurance Requirements

### (a) Premiums

As between the DDC and the Design-Builder, the Design-Builder will be responsible for paying all premiums and expenses with respect to the Insurance Policies the Design-Builder is required to provide pursuant to this Agreement and the Design-Builder will have no recourse against the DDC for payment of any premiums or expenses.

### (b) Deductibles and Self-Insured Retentions

- (i) The Design-Builder will be responsible for paying all Insurance Policy deductibles and self-insured retentions and the DDC will have no liability for deductibles, self-insured retentions or claim amounts in excess of the required coverage. The DDC will have final approval on the limits of deductibles and self-insured retentions. If self-insured retention or deductibles (or both) are expressly permitted in this Agreement, or are approved for use, the Design-Builder must:
  - (A) maintain a fully funded self-insured retention to meet these obligations at all times;
  - (B) ensure that the self-insured retention covers any liability imposed in this Agreement and the Design-Builder and its Subcontractors with respect to all Work, operations and obligations assumed by the Design-Builder and its Subcontractors;
  - (C) pay for all claims, defenses, any claims-related costs and damages (at their sole cost) without any contribution from the additional insureds; and
  - (D) ensure that such self-insured retention program provides the additional insureds with all rights, immunities and protections, including defense, that would be provided to it by traditional, commercially procured insurance programs.

### (c) Primary Coverage

The Design-Builder must ensure that:

- (i) each Insurance Policy provides that the coverage is primary (and non-contributing) with respect to all named and additional insureds and loss payees, as their interests may appear (not applicable to professional liability insurance/errors and omissions insurance);
  - (ii) any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any additional insured must not contribute with it; and
  - (iii) each Insurance Policy does not include any exclusions for “action over claims” (insured vs. insured).
- (d) **Off-Site Coverage**

To the extent applicable, the Design-Builder must obtain and maintain, or cause to be obtained and maintained, CGL policies (with endorsements naming the City, its officials and employees, as additional insureds and the immunity clause endorsement) and workers’ compensation policies (with endorsement naming applicable Subcontractors named insureds) that a reasonable and commercially prudent contractor in North America performing work similar to that to be performed by the Design-Builder would maintain to cover the Design-Builder’s operations off-site.

### 1.3 **Named Insureds, Additional Insureds and Loss Payees**

The Design-Builder must ensure that each Insurance Policy names as insured, additional insureds and loss payees (as their respective interests may appear) at least the relevant Persons identified in this Exhibit.

### 1.4 **Project-Specific Insurance and Limits**

- (a) Unless provided otherwise in this Exhibit (e.g. through a DDC approved CCIP), all Insurance Policies must be purchased specifically and exclusively for the Work and extend to all aspects of the Work, with coverage limits devoted solely to the Work.
- (b) If the Design-Builder or its Subcontractors (or both) obtains or maintains insurance in an amount greater than the minimum limits required under this Agreement, the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds.
- (c) All Insurance Policies may be reviewed by DDC for adequacy of terms, conditions, coverages and limits of coverage at any time. Subject to the terms of the Agreement with regard to DDC Modification Request and DDC Directives, the DDC may at any time during the term of this Agreement change or modify the limits and coverages of insurance.

### 1.5 **Verification of Coverage**

- (a) The Design-Builder must deliver proof of its Insurance Policies and, where applicable, proof that the City, and its officials, employees, and its agents and consultants, as expressly required in this Agreement, and any other additional insureds, are additional insureds on each Insurance Policy: (1) Within ten days of the Agreement Date, (2) each time thereafter that the Design-Builder is required to obtain or cause to be obtained or to renew or cause

to be renewed an Insurance Policy, and (iii) not less than fifteen Business Days prior to the expiration date of each Insurance Policy, and (iv) upon written request by the DDC or the City Corporation Counsel. The following proof is acceptable:

- (i) for Insurance Policies other than Worker's Compensation, Disability, and Employer's Liability, a certificate of insurance accompanied by a completed certification of insurance broker or agent (included in this Exhibit) and any endorsements by which the City, including its officials, employees, agents and consultants and any other additional insureds have been made an additional insured;
- (ii) For Worker's Compensation, Disability, and Employer's Liability, the only acceptable proof must be one of the following forms:
  - (A) Form C-105.2, Certificate of Workers' Compensation Insurance;
  - (B) Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
  - (C) Form SI-12, Certificate of Workers' Compensation Self-Insurance;
  - (D) Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
  - (E) Form DB-120.1, Certificate of Disability Benefits Insurance;
  - (F) Form DB-155, Certificate of Disability Benefits Self-Insurance;
  - (G) Form CE-200 – Affidavit of Exemption;
  - (H) Other forms approved by the New York State Workers' Compensation Board; or
  - (I) Other proof of insurance in a form acceptable to the City.
- (iii) Alternatively, the Design-Builder may provide a full copy of the Insurance Policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

Proof submitted pursuant to (i) above must (x) be on the most recent ACORD or ISO form, as applicable (or other form approved by DDC) consistent with the required coverage, (y) state the identity of all insurers, named insureds and additional insureds, and (z) state the type and limits of coverage and where applicable, include as attachments all additional insured endorsements.

Each Insurance Policy must (i) be on the most recent ACORD or ISO form, as applicable (or other form approved by DDC) consistent with the required coverage, (ii) state the identity of all insurers, named insureds and additional insureds, and (iii) state the type and limits of coverage and where applicable, include as attachments all additional insured endorsements.

- (b) Promptly (and in any event within ninety days) after the effectiveness of each Insurance Policy, the Design-Builder must deliver to the DDC:
  - (i) a true and complete certified copy of each Project-specific Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements; and
  - (i) evidence of payment (including clear allocation methodology on non-project specific policies) of any premium then due that is acceptable to the DDC.
- (c) Without limiting Sections 1.5(a) and 1.5(b), the Design-Builder must deliver to the DDC a true and complete certified copy of each Insurance Policy applicable to the Work within seven Business Days of receiving a written request from the DDC.
- (d) If the Design-Builder:
  - (i) does not provide the DDC with a certificate of insurance and proof of payment within seven Business Days after receiving a written request from the DDC; or
  - (ii) fails or refuses to obtain or maintain in force the Insurance Policies required by this Exhibit,

the DDC may, without prejudice to any other available remedy and without further inquiry as to whether the Insurance Policy is actually in force, exercise its remedies under Article 35 (*Design-Builder Default*) of this Agreement, for a Design-Builder Default under Section 35.1(n) (*Insurance Default*) of this Agreement.
- (e) The Design-Builder indemnifies the City and the DDC for Losses incurred in connection with any Design-Builder Default under Section 35.1(n) (*Insurance Default*) of this Agreement.
- (f) The DDC may, without obligation or liability, suspend all or any portion of Work during any time that the proofs of coverage, in compliance with this Exhibit, have not been provided as required in this Agreement. If the Work is so suspended, the Design-Builder will not be entitled to claim any Delay Event or Change Order.
- (g) Insurance coverage provided pursuant to this Agreement or otherwise will not relieve the Design-Builder of any liability under this Agreement, nor will it preclude the DDC from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or Applicable Law.

#### 1.6 **Endorsements, Waivers and Additional Requirements**

- (a) Subject to Section 1.6(b), the Design-Builder must ensure, and must cause all Subcontractors, as applicable, to ensure that all Insurance Policies comply with all requirements specified in this Agreement, including the following:
  - (i) any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project will not affect coverage provided to the other named insureds or additional insureds and their respective officials, employees, agents and consultants;

- (ii) the Insurance Policies will apply separately to each named insured and additional insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability;
- (iii) Not used;
- (iv) endorsements adding additional insureds to required policies must not contain additional limitations, conditions, restrictions or exceptions to coverage, and must state that the interests and protections of each additional insured will not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage;
- (v) the certificate of insurance and each liability policy must contain the following endorsement for the above liability coverages:
  - (A) "The insurer(s) must not, without obtaining the express advance written permission from the City Corporation Counsel, raise any defense involving in any way the jurisdiction of a Tribunal over the person of the City, DDC, the immunity of the City, DDC, or their officials, agents, consultants or employees, the governmental nature of the DDC or the City, or the provisions of any statutes respecting suits against the DDC or the City";
  - (B) any automobile liability policy must be endorsed as required to include Motor Carrier Act Endorsement-Hazardous Materials Clean-up (MCS-90) for those Subcontractors who will at any time transport Hazardous Materials;
  - (C) unless specified otherwise in this Exhibit, each Insurance Policy must provide coverage on an "occurrence" basis and not a "claims made" basis; and
  - (D) excess/umbrella policies must 'follow form' to the underlying policy and must have a drop-down provision and must be at least as broad as the underlying policies;
- (vi) to the extent any insurance coverage contains "Other Insurance" language or provisions, such language or provisions must not be applicable to the additional insureds or to any insurance coverage maintained by an additional insured.
- (vii) insurance coverage must not contain any special limitations on the scope of coverage and/or protection afforded to the City, its officials and employees, and the other additional insureds.
- (viii) coverage for additional insureds must not be restricted to vicarious liability unless required by Applicable Law;
- (ix) each Insurance Policy must contain a separation of insured and severability of interests clauses so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds must not reduce or void coverage to the other insureds; and

- (x) each Insurance Policy must provide that the City, its officials and employees, and the other additional insureds will not be prejudiced by the Design-Builder's or its Subcontractors' error, omission or misdescription of the risk insured, incorrect declaration of values, failure to advise insurers of change of risk interest or property insured or failure to comply with a statutory requirement, nor by any other misrepresentation, act or omission by the Design-Builder or its Subcontractors that would otherwise result in forfeiture or reduction of coverage.
- (b) Sections 1.6(a)(i), (ii), (iv), and (v)(B) and (C) will not apply to the professional liability policy.
- (c) In the event that any Insurance Policy required of any Subcontractor by the Agreement or by the Design-Builder is cancelled or reduced, the Design-Builder must notify DDC as soon as practicable and, in any event, not more than thirty Days after the Design-Builder learns of such cancellation or reduction. DDC may, at its sole option, suspend the performance of Work by such Subcontractor until coverage is restored or an alternative Insurance Policy acceptable to DDC is obtained and proof of the same has been accepted by DDC. Any such suspension will not constitute a Delay Event.

#### 1.7 **Waivers of Subrogation**

- (a) To the greatest extent permitted by law, the Design-Builder waives all rights against the City and any other additional insureds and their officials, employees, agents and consultants for any claims to the extent covered and paid by insurance obtained pursuant to this Exhibit, except the rights they may have to the proceeds of this insurance.
- (b) The Design-Builder must require all Subcontractors to provide similar waivers in writing each in favor of all the City, and any other additional insureds.

#### 1.8 **Defense Costs**

Unless otherwise agreed in writing by the DDC, defense costs must not be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional liability, director's & officers liability, crime, EPL, cyber liability, network security and data breach insurance, contractor's pollution and environmental impairment liability policies.

#### 1.9 **Contesting Denial of Coverage**

If any insurer under an Insurance Policy described in this Exhibit denies coverage with respect to any claims reported to the insurer, the Design-Builder will initiate and bear all costs of contesting the denial of coverage.

#### 1.10 **Subcontractor Insurance Requirements**

- (a) To the extent that any Insurance Policy required by this Agreement does not cover a Subcontractor under a Design-Builder provided CCIP:
  - (i) the Design-Builder must cause each Subcontractor to obtain, prior to commencing any Work, and maintain all insurance, including commercial general liability, auto, workers compensation, required by Applicable Law and that a reasonable and

commercially prudent contractor in North America performing work similar to that to be performed by the Subcontractor would maintain;

- (ii) the Design-Builder must cause each Subcontractor to include the additional insureds specified in the applicable Insurance Policies as required under this Exhibit;
  - (iii) the Design-Builder must ensure that no Subcontractor's policy includes any exclusions for "action over claims" (insured vs insured); and
  - (iv) the Design-Builder must cause each Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against these additional insureds.
- (b) It is the Design-Builder's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any and all Subcontractors are accurate, adequate and in compliance, and the Design-Builder must retain a copy of its Subcontractors' certificates of insurance, as applicable.
- (c) If requested by the DDC, the Design-Builder must promptly (and in any event within five Business Days) provide certificates of insurance evidencing coverage for each Subcontractor.

#### 1.11 Prosecution of Claims

- (a) Unless otherwise directed by the DDC in writing with respect to the City's insurance claims, the Design-Builder will be responsible for reporting and processing all claims and potential claims to insurers. Such processing of claims must be given even where the Design-Builder may not be covered under an Insurance Policy if this Agreement requires that the City, its officials and employees, be additional insureds (for example, where the Design-Builder's employees was insured).
- (b) The Design-Builder must:
- (i) promptly report to the insurers under these policies any and all matters that may give rise to an insurance claim by the Design-Builder or the City;
  - (ii) promptly, using Reasonable Efforts, pursue these insurance claims in accordance with the claims procedures specified in these policies, whether for defense or indemnity or both; and
  - (iii) promptly provide the DDC with first- and third-party claims information, including loss reports, claims data, reserves, investigation, root cause analysis and preventive loss control measures.
- (c) The Design-Builder must enforce all legal rights against the insurer under the applicable Insurance Policies and Applicable Laws, including pursuing necessary litigation and enforcement of judgments. The Design-Builder will be deemed to have satisfied this obligation if:
- (i) a judgment is not collectible through the exercise of lawful and diligent means in accordance with Best Management Practice; or

- (ii) in relation to the pursuit of litigation, there is no reasonable likelihood of success for the litigation.
- (d) The Design-Builder and its insurers must not, without obtaining the advance written consent of the City Corporation Counsel, raise any defense involving in any way the jurisdiction of a tribunal over the City, the DDC, the immunity of the City, the DDC, or their officials, employees, consultants or agents, the governmental nature of the City or DDC, or the provisions of any statutes respecting suits against DDC and the City.
- (e) The DDC must:
  - (i) promptly notify the Design-Builder of the DDC's incidents, potential claims, and matters that may give rise to a City insurance claim, to tender to the Design-Builder's insurer the City's defense of the claim under the Insurance Policies; and
  - (ii) cooperate with the Design-Builder as reasonably necessary for the Design-Builder to fulfill its duties under this Exhibit.
- (f) If at any time the Design-Builder:
  - (i) has not performed its obligations with respect to insurance coverage under this Agreement; or
  - (ii) is unable to enforce and collect any insurance for failure to (A) assert claims in accordance with the terms of the Insurance Policies or (B) prosecute claims using Reasonable Efforts,

for purposes of (x) Section 31 (*Consequential Loss*) of the Agreement or (y) calculating withholdings in compensation to the Design-Builder on account of such failures, in each case, the Design-Builder will be treated as if it has elected to self-insure up to the full amount of insurance proceeds that would have been available had the Design-Builder performed its obligations and the DDC will be entitled to reduce any such compensation due and payable to the Design-Builder to the extent any amounts representing such insurance proceeds are not promptly paid by the Design-Builder. Except as provided in the foregoing, there must be no self-insurance program, unless approved by DDC.
- (g) If in any instance the Design-Builder has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by the City, the City may, but is not obligated to, report the claim directly to the insurer and process the claim.

#### 1.12 Notices

The Design-Builder must provide the DDC with the following written notices:

- (a) notice of any claim made by the Design-Builder or any other party under any insurance obtained in connection with the Project, promptly (and in any event within five days) of the occurrence of the claim, denial of the claim (if applicable) and, on a quarterly basis, a summary of all claims (open and closed); and
- (b) at least thirty days prior to any cancellation, termination, non-renewal or reduction of coverage, or any modification to a policy that materially affects DDC or any additional

insured's coverage, the Design-Builder must provide written notice to DDC, attention: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007, setting forth such cancellation, termination, reduction or modification.

Whenever such notice is sent under an Insurance Policy on which the City, its officials and employees, are listed as additional insureds, the Design-Builder must provide copies of the notice to the City Comptroller, the DDC and the City Corporation Counsel. The copy to the Comptroller must be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York, 10007. The copy to the City Corporation Counsel must be sent to Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

If the Design-Builder fails to provide any of the above notices to any appropriate insurance carrier in a timely and complete manner, the Design-Builder must indemnify the City for all Losses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

**EXHIBIT 7**

**Project Requirements**

The following volumes are attached to this Exhibit 7:

Volume 2 – Standard Project Requirements

Volume 3 – Specific Project Requirements

Volume 4 – Reference Documents

**EXHIBIT 8**

**Design-Builder Proposal Commitments**

**EXHIBIT 9**

**Key Personnel / Key Subcontractors**

# Principal Participants and Key Personnel Commitment and Statement of Availability

05



## **Form A – Principal Participants and Key Personnel Commitment and Statement of Availability**

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Name of Proposer: Hunter Roberts Construction Group, LLC (the "**Proposer**")

Reference is made to the Request for Proposals for the Queens Site Parking Garage: An Early Works Project of the New York City Design-Build Borough-Based Jails Program (the "**RFP**") issued by the Department of Design and Construction of the City of New York (the "**DDC**"). All capitalized terms used but not defined in this Principal Participants and Key Personnel Commitment and Statement of Availability will have the meanings set forth in Volume 0: Instructions to Proposers of this RFP (the "**ITP**").

The Proposer commits that, if it becomes the Design-Builder under the Contract Documents in respect of the Project, the Proposer will use the entities and individuals listed below for their stated positions and that, to the extent within the Proposer's control, these entities and individuals will be available for the periods necessary, and on a sufficient basis, to fulfill their Project-related responsibilities and will not also be committed to other projects at any time where their presence is required full-time for this Project.

In the table below, the Proposer summarizes all the Major Participants and Key Personnel that the Proposer commits to have as part of its DB Team, states the Major Participants and Key Personnel that differ from those named in the SOQ (if any) and, for any substitute Major Participants and Key Personnel, attaches copies of resumes plus the DDC's written consent for the personnel change.

<b>Role</b>	<b>Changed relative to SOQ (Yes/No)</b>	<b>Name</b>	<b>Years of experience</b>	<b>Parent Firm name</b>	<b>% of time dedicated to Project</b>	<b>Resume attached (Yes/No)</b>	<b>DDC's consent attached (Yes/No)</b>
<b>Principal Participant</b>	No		N/A	N/A	N/A	No	No
<b>Design-Lead (Firm)</b>	No	Marvel Architects, PLLC	N/A	N/A	N/A	N/A	N/A
<b>Architect-of-Record (Firm)</b>	No	Urbahn Architects PLLC	N/A	N/A	N/A	N/A	N/A
<b>Builder</b>	No	Hunter Roberts Construction Group LLC	N/A	N/A	N/A	N/A	N/A
<b>Design-Build Project Executive</b>	<b>Yes</b>	Sean O'Connor	20	Hunter Roberts Construction Group LLC	20%	Yes, please see Technical Proposal Part 6	Yes
<b>Design-Build Project Manager</b>	<b>Yes</b>	Joshua Frankel, AIA	21	Hunter Roberts Construction Group LLC	100%	Yes, please see Technical Proposal Part	Yes
<b>Design Integrator</b>	No	Ijeoma Iheanacho, LEED AP	19	Urbahn Architects PLLC	100%	No	N/A
<b>Architect-of-Record (Individual)</b>	No	Donald E. Henry, Jr., AIA, LEED, CPHC	36	Urbahn Architects PLLC	25%	No	N/A
<b>Design Lead (Individual)<sup>1</sup></b>	No	Guido Hartray, AIA	31	Marvel Architects, PLLC	10%	No	N/A
<b>Design-Build Construction Project Manager</b>	<b>Yes</b>	Joshua Frankel, AIA	21	Hunter Roberts Construction Group LLC	100%	Yes, please see Technical Proposal Part 6	Yes

<sup>1</sup> Design Lead (Individual) may also serve as the Architect-of-Record (Individual) if they meet the qualifications for both.

<b>Project Safety Representative</b>	N/A	Shane Skennonto	22	Hunter Roberts Construction Group LLC	5%	Yes	N/A
<b>M/WBE Coordinator <sup>2</sup></b>	N/A	Krystin Hence	8	Hunter Roberts Construction Group LLC	25% <sup>2</sup>	Yes	N/A

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<sup>2</sup> (To be used if retain Krystin) Krystin Hence is employed directly by Hunter Roberts Construction Group, LLC which is not an M/WBE firm. However, Krystin is our preferred candidate for this position given her experience and familiarity with the many M/WBE participation programs we deliver projects for.

Executed \_\_\_\_\_ September 18, 2020.

[ENTITY NAME]

By: Hunter Roberts Construction Group LLC

Name: Sean O'Connor

Title: Senior Vice President

# KEY PERSONNEL



Position/Assignment for the Project: Project Executive			
Firm Name:	Hunter Roberts Construction Group, LLC	Years of Experience:	20+
Name:	Sean O'Connor	This Firm:	14
Title:	Senior Vice President	Other Firms:	5
Degree:	B.S., Psychology & B.A., Business Management	Specialization:	Construction Management
Year Earned:	1997 / 1997	Registration:	N/A

As Project Executive, Sean O'Connor is responsible for the overall performance and successful completion of his Clients' projects. He is accountable for the budget, schedule, safety and quality of each project under his control. Sean directs and leads his teams to ensure the day-to-day construction efforts meet and exceed client expectations. He has a proven track record developing projects from pre-construction through occupancy. Sean is a seasoned construction professional with over 20 years of experience. Sean led the team for the design-build Yankee Stadium Parking Facilities. He has extensive experience in pre-construction, new construction, renovations and interior fit-outs and is well known for his strong leadership skills. Sean's market sector experience includes Higher Education, K-12, Interior Renovations, Commercial, Retail, Public Sector and he has led pre-construction teams for multiple projects. Sean has submitted his application for the DBIA Associate Design-Build Professional credential and expects to participate in the October course.

**Yankee Stadium Parking Facilities, Bronx, NY**

Design/build contract for three garages, containing approximately 5,000 parking spaces. Multiple city agency approvals. Contaminated soil removal. Reinforced cast-in-place concrete pile caps set on concrete-filled steel pipe pile foundation. Built and phased around New York Yankees seasons.

**Macombs Dam Park, Bronx, NY**

A 7.5-acre park built atop Parking Garage A at Yankee Stadium. Includes a running track, football/soccer field, grandstand, comfort station, handball courts and basketball courts, concrete planters with green roof assembly, and irrigation and sprinkler systems.

**68-74 Trinity Place, New York, NY**

Demolition of two buildings followed by the construction of a new, 28-story, structural steel, commercial mixed-use building with five floors of public space, multiple floors of mechanical space, and 22 floors of office space for commercial tenants. The building will also contain a parish hall and gymnasium. An elevated walkway, currently spanning Trinity Place between 74 Trinity and the church, will be supported and left on site to be rejoined to the new podium and link the two properties, all built along side the 1, R, and W, subway lines. Scope of the new building calls for an elaborate curtain wall system and high-end interior finishes.

**Fiterman Hall, New York, NY**

A 400,000-SF academic building for BMCC. Includes a first floor art gallery, 54 classrooms, 31 computer laboratories, 20 conference rooms, offices, a library, 12 soundproof music practice rooms, 13 art studios, a choral and ensemble room, and assembly rooms.

**Pier 57, New York, NY**

The 400,000-SF redevelopment of a Landmark pier. Consists of renovations to the existing structure and surrounding property, including marine work to expand public amenities, highway and civil alterations to reconfigure front of building and to provide new walking/bike path, and major alterations to create spaces for tenant and retail spaces. Major infrastructure components include substantial vertical transportation (new stairwells, elevators, and escalators), removal of old and installation of new MEPS systems, public rooftop park, and substantial structural package.

**South Street Seaport Pier 17 Redevelopment, New York, NY**

Transformation of Pier 17 through demolition of existing pier and building. New pier construction with increased open space. Four-story pier building with garden roof, destination stores, restaurants, and neighborhood shops.

**Queens Plaza Tower, Long Island City, NY**

A 48-story, 350,000-SF condominium residential tower with 300 units and amenity spaces. Scope also includes single-story parking garage and retail space with rooftop amenity garden.

**Fulton Market Building, New York, NY**

Gut rehabilitation of existing four-story building decimated by Superstorm Sandy. Installation of drilled mini piles, caps, grade beams, and elevator pits. Removal of existing floor slabs and structural steel, installation of structural steel trusses and slabs, and significant structural reinforcement. New elevators, escalators, exterior storefront, and MEPS systems.

<b>Position/Assignment for the Project:</b>			
<b>Firm Name:</b>	Hunter Roberts Construction Group, LLC	<b>Years of Experience:</b>	21
<b>Name:</b>	Josh Frankel, AIA	<b>This Firm:</b>	3
<b>Title:</b>	Design-Build PM/Design-Build Construction PM	<b>Other Firms:</b>	18
<b>Degree:</b>	M. Arch & B.A., English Literature	<b>Specialization:</b>	CM / Estimating
<b>Year Earned:</b>	1999 / 1994	<b>Registration:</b>	NYS Architecture

As Design-Build Project Manager/Design-Build Construction Project Manager, Joshua Frankel is responsible and accountable to the Design-Build Project Executive and Owner for the overall performance and success of the project. Josh will work closely with the design team to complete a design effort that exceeds the Owner's performance requirements and meets the budget. He will lead the staff in the day-to-day operations including trade procurement, coordination and submittals. Josh acts as the liaison between Hunter Roberts, the subcontractors, the design team and ownership. Josh has dedicated his 21 year career to work in the public realm for healthcare, cultural and education clients. He is a believer in the design-build procurement methodology and has completed the coursework for the Associate Design-Build Professional credential. Josh is an advocate for early and continuous collaboration between the design and construction teams. Virtually all of his projects completed over the last 15 years were executed in highly collaborative team environments - including an IPD- type project with trade management agreements for Northwell Health and an extensive pre-construction assignment for Mount Sinai South Nassau's campus revitalization.

**Northwell West Wing Addition, Manhasset, NY**

Design project manager for a proposed 250,000-SF addition to an existing hospital. Scope includes eight new operating rooms and over 40 critical care beds. Massing and design, including glazed terra cotta panels and curtainwall, was chosen to minimize impact of a large building in a residential neighborhood while maintaining a contemporary brand for Northwell. Construction total \$250 million.

**Museum of the City of New York Renovation & Expansion, New York, NY**

Design project manager for a \$20 million renovation and expansion project that reorganized the gallery and administrative spaces while greatly enhancing the visitor experience..

**Mount Sinai Downtown Beth Israel Hospital, New York, NY**

Design Project manager for a proposed new, 240,000-SF hospital in Lower Manhattan. Scope includes conversion of the ground floor of the existing New York Eye and Ear Care Infirmary into a new emergency department as well as a new tower with five operating rooms, 80 inpatient beds, labs, and administrative spaces.

**NYU Lutheran Medical Center Ambulatory Surgery Center Expansion, Brooklyn, NY**

Design project manager for the expansion of an existing one-story building into a new Ambulatory Surgery Center and Family Health Center. Conversion of the roof and existing HVAC equipment space into interstitial mechanical space and addition of two floors above. The first of the new floors houses the ambulatory surgery area while the upper floor contains the Family Health Center.

**Montefiore Medical Center Children's Hospital Renovation & Expansion, Bronx, NY**

Design project manager for a 300,000-SF expansion and renovation, including obstetrics, neonatal, and pediatrics medicine within a single facility. Located on a corner of the Moses Campus, the expansion requires careful planning to minimize disruptions to critical clinical programs. Total construction cost over \$300 million.

**South Nassau Communities Hospital, Oceanside, NY**

On-call contract four South Nassau Communities Hospital. Includes the following projects: J-Wing Addition / New Central Utility Plant and Electrical Infrastructure Upgrades; Emergency Department Phase II Renovation; Observation Suite; New Parking Garage; Medical Arts Pavilion.

**Lycee Francais de New York, New York, New York**

Design project manager for construction for a 17,000 SF expansion. The new wing, positioned prominently on York Avenue, creates a more public face for the school. The new building provides important new teaching and learning spaces, including new classrooms, offices, study areas, a media lab, a broadcast studio and a maker-space.

**Indiana University Global & International Studies Building, Bloomington, IN**

Design project manager for a new 165,000-SF academic building housing the School of Global and International Studies as well as other language, literature, and culture studies programs. Building includes 10 classrooms, lecture hall, academic offices, and graduate student work space. Design calls for two wings so that each professor's office has a window: the west wing follows the school's arboretum; the east wing follows an existing campus edge. Architectural style bridges between older buildings and Brutalist library, linking the campus together. Construction cost total \$40 million.

Position/Assignment for the Project: Design Integrator			
Firm Name:	Urbahn Architects PLLC	Years of Experience:	19
Name:	Ijeoma Iheanacho, LEED	This Firm:	3
Title:	Project Manager	Other Firms:	16
Degree:	Bachelor of Architecture, Cornell	Specialization:	Architecture
Year Earned:	2001	Registration:	N/A

With nearly 20 years of professional experience, Ijeoma is one of the most industrious architects at Urbahn. Diligent and determined, she takes complete charge of a project's design integration right from the kick-off meeting, up until the project reaches completion. Her work has included transportation facilities, K-12 schools, residential complexes, and urban infrastructure projects. She has consistently applied her dogged approach to design management and integration, resulting in projects that meet client standards and procedures, comply with schedules and budget and achieve performance expectations. She is meticulous about documentation and communication so that all parties understand the status, issues and actions that must be taken to move the project forward and to completion. Ijeoma is conversant with Revit and has managed several projects delivered on that platform.

Ijeoma is a proponent of sustainability and progressive social and cultural initiatives. She has been a LEED Accredited Professional since 2009, and is active in several industry organizations.

**Enhanced Station Initiative – Packages 1 & 8**

As part of Governor Cuomo's initiative to transform New York State's transportation infrastructure into the 21st Century, 31 subway stations were designated for fast-paced modernization on a Design-Build basis. Package 1 included 3 subway stations on Brooklyn's Fourth Avenue Line - 53rd Street, Bay Ridge Avenue, and Prospect Avenue Stations - and was completed in 2017. Following the success of NYCT ESI Package 1, the D-B Team was awarded Package 8, including 145th Street Station in Manhattan, and 167th Street and 174-175th Street Stations in the Bronx. Urbahn was the lead design entity on the D-B Team for Packages 1 and 8, handling the architecture, schedule management and design integration.

**Tides North Residential Complex at Arverne By The Sea, Far Rockaway, NY**

Urbahn designed two multifamily apartment buildings as part of the Arverne By The Sea complex, an exemplar of sustainable urban development. The 6-acre site was designed to include 454 apartment units, including studios, 1-, 2-, and 3-bed apartments, with a total square footage of 550,000 sf. In addition to the residential units, the complex is designed to include 25,000 sf of retail, a club house and an outdoor swimming pool.

**Accessibility Improvements at Eastern Parkway and 59th Street Stations, Brooklyn, NY**

Urbahn was engaged by NYCT to provide full design and construction administration services to provide accessibility improvements at two Brooklyn subway stations. Urbahn is responsible for the entire consultant team, including the integration of civil, structural and MEP engineering, as well as lighting design and cost estimating. For each station Urbahn applied and adapted NYCT standard construction assemblies, including elevator equipment and elevator kiosks. Both projects are currently under construction.

**PS 144Q Addition and Renovation, Forest Hills, NY**

Urbahn is responsible for the planning and design of a major addition, as well as significant renovations to the existing 1931 school. The addition includes four stories housing 24 classrooms from Pre-K through 4th grade, with a subterranean cafeteria and full-service kitchen to serve the entire student population. Our design realigns space within the existing building to complement the full program, while providing voluntary accessibility improvements, as well as life safety, mechanical and electrical upgrades.

**NYCT, World Trade Center Transportation Hub, New York, NY**

In conjunction and coordination with the development of the replacement World Trade Center, this project involved the reimagining of the subway complex connections and environment. Design development of major design issues, attendance at client and consultant meetings, coordination of production packages, creation of construction drawings and design sketches, coordination with interoffice disciplines, correspondence with manufacturers, documentation and design integration of remaining existing conditions.

Position/Assignment for the Project: Designer of Record			
Firm Name:	Urbahn Architects PLLC	Years of Experience:	36
Name:	Donald E. Henry, Jr., AIA, LEED, CPHC®	This Firm:	30
Title:	Managing Principal	Other Firms:	6
Degree:	Bachelor of Architecture, NJIT	Specialization:	Architecture
Year Earned:	1980	Registration:	RA - New York & New Jersey
<p>A Principal at Urbahn, Donald Henry is an experienced architect who demands the highest level of performance from all who work for him. While he commonly directs projects with large multi-disciplined staffs, he is very much a hands-on architect, frequently in the studio solving constructibility problems in design, or in the field inspecting construction progress. Throughout his diverse career, Mr. Henry has focused on public infrastructure, justice and public safety facilities, and high security projects.</p> <p>Throughout Donn's career he has focused on environmental design, exploring the potential of renewable energy and use of recycled building materials. His continuing passion for sustainable design led to his early LEED accreditation in 2006. In 2008 he authored the "Green Ordinance" for the Jersey City Building Code, and was recently the recipient of the Jersey City Redevelopment Authority "Green Award" for Sustainability for his leadership in the design and construction of the LEED Silver Public Safety Center. Mr. Henry recently directed the design and construction administration for the Jersey City Municipal Services Complex, which is the first LEED Platinum project built by the city. In addition, Donn recently became a Certified Passive House Consultant.</p> <p>Under Donn's leadership the Bayamon Correctional Medical Center was the recipient of the Team Award from the Healthcare Symposium. Many of Donn's projects have received recognition by industry organizations and media.</p> <p><b>Jersey City Municipal Services Complex, Jersey City, NJ</b> The project transforms a former warehouse site to a multi-building complex, and was envisioned as a Gateway to Jersey City, and has achieved LEED Platinum certification. The project impetus was threefold: a public/private land-partnership to redevelop waterfront necessitated government relocation; the City's facility consolidation program; and its designation as an exemplar of sustainable redevelopment. The complex includes a wide range of vehicular parking, maintenance and repair structures, administrative functions, a police emergency services facility, and community amenities. Role: Principal In Charge, Architect of Record and Project Manager Duration: from Concept Stage to Construction Completion</p> <p><b>Manhattan 6/6A/8 Garage, New York, NY</b> Urbahn was responsible for the planning and design of New York City Department of Sanitation's District 6/6A/8 Garage. Located between the FDR Drive and First Avenue near the East River, Urbahn's design features measures to protect the critical operations and systems within the 500-year flood zone. This 4-story garage houses 171 sanitation vehicles: refuse collection trucks, mechanical sweepers, and 120 employee cars. Working closely with DSNY, Urbahn designed the facility and its semi-transparent façade to be welcomed by the nearby residential, commercial and institutional communities. The project received approval by the NYC Public Design Commission. Role: Principal In Charge, Architect of Record and Project Manager Duration: from Concept Stage to Construction Documents</p> <p><b>District 1 &amp; 3 Sanitation Garage Complex, Staten Island, NY</b> Urbahn's scope of work included a comprehensive functional program of needs, assessment site/building conditions, environmental assessment, and the examination of a range of redevelopment strategies. The former site housed facilities to support the operations of District #3, including a large vehicle garage, a repair shop, a waste drop off area, and outdoor parking for sanitation vehicles that do not fit within the garage and employee vehicles. Based on Urbahn's study, NYCCDC is currently managing the design and construction program. Role: Principal In Charge, Architect of Record Duration: CPSD Study</p>			

**Jersey City Public Safety Center, Jersey City, NJ**

This building serves as the primary communications center for all emergency responders. Located on the second floor is the heart of this 25,000 sf facility: the 9-1-1 call center, a theatre of operations for the police, fire, and EMS departments. There are several critical adjacencies to the main communications theatre, including suites for groups providing research, planning and tactical support. In addition, the core program also called for a ring of support spaces. The design merges high security, anti-attack features, employee amenity, sustainable design, and community design considerations.

Role: Principal In Charge, Architect of Record and Project Manager

Duration: from Concept Stage to Construction Completion

**Federal Detention Center, Brooklyn, NY**

Urbahn designed the 1000-cell Federal Detention Center at Bush Terminal as part of the multi-phase master plan, previously developed by the firm. The new Federal Detention Center building shares a city block with the 500-bed Federal Detention Center designed, gut renovated, and occupied in the first phase of the project.

Role: Project Manager

Duration: from Concept Stage to Construction Completion

Position/Assignment for the Project: Design Architect			
Firm Name:	Marvel Architects, PLLC	Years of Experience:	31
Name:	Guido Hartray, AIA	This Firm:	7
Title:	Founding Partner, Marvel Architects, PLLC	Other Firms:	24
Degree:	Harvard GSD, Master of Architecture	Specialization:	Architectural Design
Year Earned:	1994	Registration:	Registered Architect, NY, NJ
<p>Guido Hartray has worked with Jonathan Marvel since 1997, and is a founding Partner of Marvel Architects. He has led design teams working on a wide range of projects, including creating a streetscape vision of Union Square and integrating park and building for Pierhouse and 1 Hotel in Brooklyn Bridge Park. Under his leadership NJIT created a new campus academic center for the campus in the Central King Building. He has created workspaces that bridge digital and printed media for America Media and the American Physical Society.</p> <p>Guido is dedicated to creating architecture that contributes to an environment that is greater than the individual project. Whether the context of the intervention is an urban neighborhood, a campus, or an existing building, Guido's design strategy builds from the context to develop designs that transform their surroundings. The dialogue between new and existing, project and neighborhood, infrastructure and architecture makes spaces that engage their inhabitants. Guido was a Fulbright Scholar studying public space in Barcelona and served on Community Board 3 in Manhattan.</p> <p><b>EDUCATION</b> Harvard University, Graduate School of Design, Master of Architecture 1994 Miami University, Ohio, Bachelor of Environmental Design 1989</p> <p><b>PRACTICE</b> Marvel Architects, NY: 2013-Present Rogers Marvel Architects, NY 1997-2013 Museo de Arte Contemporáneo de Barcelona, Spain, 1995-1997 Curator, Architectural Association, London 1995-1997 Curator, Coderch's Barceloneta Housing AM Arquitectos, Barcelona, Spain 1996 Highrise Residential Development in Badalona, Spain, Nagle Hartray &amp; Associates, Chicago 1993 Pica Ciamarra Associati, Naples, Italy 1989-1990</p> <p><b>Gowanus Green Public Space Master Plan, Brooklyn, NY</b> Gowanus Green incorporates the community's visioning principles and responds to the city's call for a mixed-use extension of the Carroll Gardens neighborhood. The design features six residential buildings with approximately 950 units in a transit-rich location. It provides affordable housing serving a wide range of incomes and needs, including housing dedicated to the formerly homeless, senior and extremely low-income New Yorkers. (Guido Hartray with Marvel Architects)</p> <p><b>Downtown Far Rockaway Housing, Queens, NY</b> In the center of Downtown Far Rockaway in Queens, Marvel has begun an ambitious project to bring 1,700 new affordable housing units to an under-utilized site between the A train terminus and the Long Island Rail Road and create more vibrant, supportive community through socially thoughtful design. (Guido Hartray with Marvel Architects)</p> <p><b>Union Square Streetscape, New York, NY</b> Marvel worked with the Union Square Partnership to envision and plan for the future of Union Square to continue its commitment to public space. As a curator, designer, contributor, and documenter of this process Marvel studied the context and the distinct ways it is used as well as the impacts and opportunities of upcoming infrastructural changes to help achieve USP's goals and those of all of Union Square's visitors, tenants, and residents. Guido Hartray with Marvel Architects</p> <p><b>Bedford Courts (Bedford Union Armory), Brooklyn, NY</b> Bedford Courts is a mixed use development located in the Crown Heights neighborhood in Brooklyn, NY. It was formerly known as the Troop C Armory, and was designed in 1903 by Pilcher and Tachau. The project will add units of housing to the site while transforming the existing armory into a community hub. (Guido Hartray with Marvel Architects)</p>			

**NJIT Central King Building Renovation, Newark, NJ**

Since 2011, our team has worked with the New Jersey Institute of Technology (NJIT) to complete the renovation of the Newark, NJ Central High School, also called the CKB. Originally opened in 1912, it is a 6-story collegiate gothic building, positioned at the edge of campus. Phased renovation of the historic structure, while maintaining occupancy in part of the building spanned from 2012-2017. The Marvel-led team conducted an exhaustive survey of existing conditions, stabilized the envelope while conducting a complete gut renovation of the interior. All systems were replaced, and the interiors of this former high school were programmed to emphasize collaboration, interaction, and socialization in-between traditional educational scenarios. The complex program includes biology research and instructional labs, flexible classrooms, a 600-seat auditorium, multiple meeting and student support spaces, and an innovation lab. The entire structure and site were reconceived as part of a University master plan, with attractive new entrances on both sides underscoring the importance of this campus-edge building. Completed on time and on budget, this LEED Gold building has been called “Newark’s crown jewel” by local press. (Guido Hartray with Marvel Architects)

**Hoboken Cove Community Boat House, Hoboken, NJ**

**The City of Hoboken asked Marvel to design a boathouse and resilience center, with a mandate to include community space and facilities for the local kayaking club, as part of the long-term Rebuild by Design initiative. The community was directly involved from the earliest stages to try and build up the boathouse’s potential for use. Currently, the project is pending development of the Rebuild by Design mega-berm that will protect so much of the New Jersey waterfront. When the boathouse gets built, it will have a profound impact on the North Hoboken community fabric. The area has no community center, and Superstorm Sandy showed the need for a local resiliency center. (Guido Hartray with Marvel Architects)**

**Pierhouse at Brooklyn Bridge Park, Brooklyn, NY**

Pierhouse, located in the heart of Brooklyn Bridge Park between Furman Street and the East River, comprises a 106-unit condominium, 300-car below-grade parking garage, 17,000 SF event space, and 195-key hotel within a 620,000 SF complex of connected buildings ranging from four to ten stories. (Guido Hartray with Marvel Architects)

**America Media Offices, New York, NY**

America Media is a 100 year old Jesuit publication which needed a space that would support its evolution into new media while maintaining its distinct perspective. After an extensive site search we identified a space overlooking the media centers of 6th avenue but also a block from St Patricks’ Cathedral. The design builds on this location by pulling the enclosed areas to the interior of the floor plate and placing circulation and open work stations on the perimeter so that shared views over the city provide the literal embodiment of America’s perspective on world events. (Guido Hartray with Marvel Architects)

**Hudson Square Streetscape Improvement Plan, New York, NY**

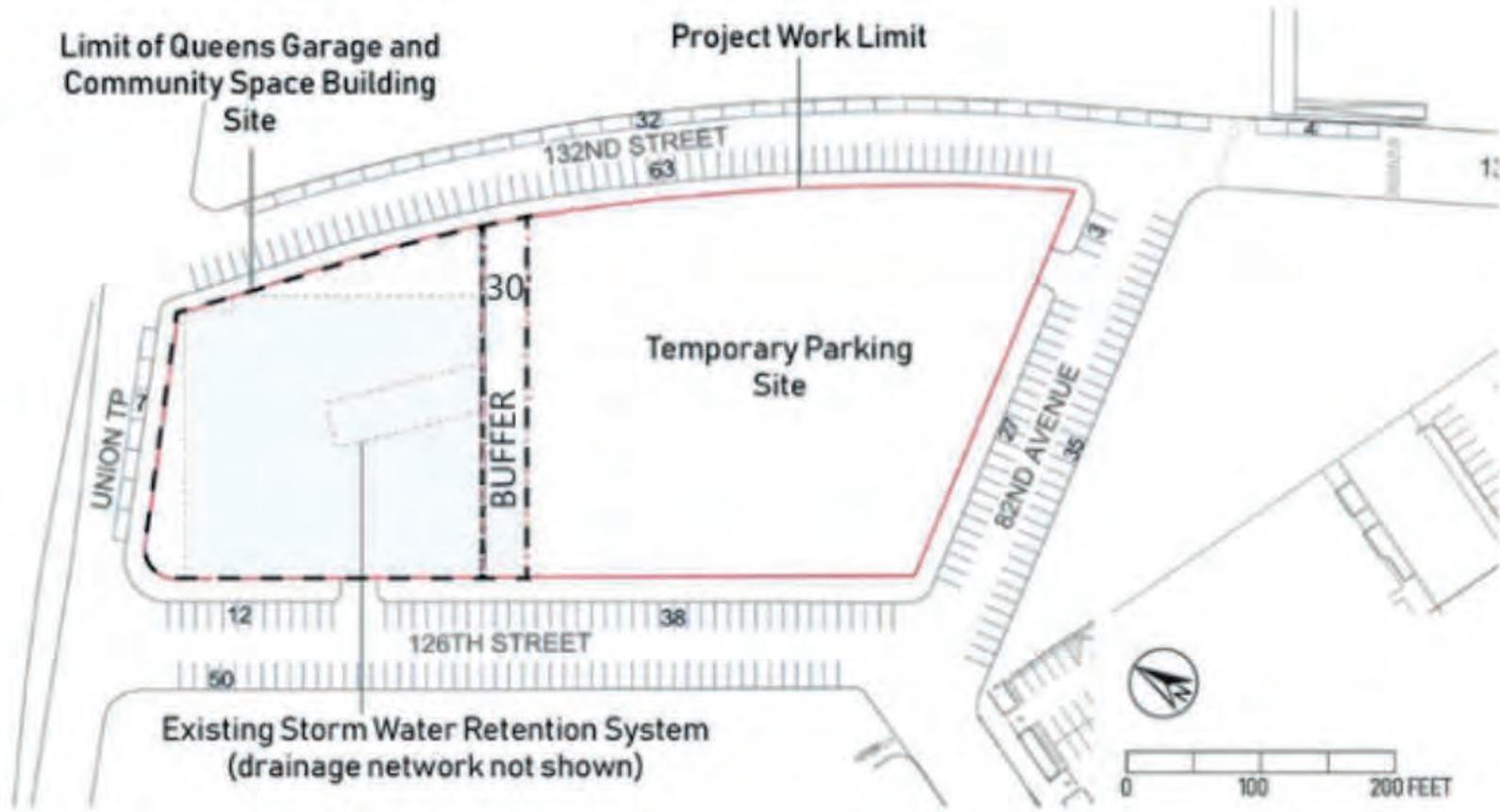
Working with Mathews Nielsen Landscape Architecture and Hudson Square Connection, the business improvement district, Marvel analyzed the neighborhood’s streetscape to develop short and long-term improvements. While the heavy north-south traffic stood out as a major challenge, it is a characteristic common to many NYC neighborhoods. Our analysis of Hudson Square revealed an equally significant problem effecting the neighborhood’s quality of life: a lack of pedestrian and retail activity on the cross streets. To address this challenge we worked with the landscape architects to develop active cross-street landscapes, incentives for pop-up loading dock conversions, and active corners written into the neighborhood’s new zoning. (Guido Hartray with Marvel Architects)

Position/Assignment for the Project: Project Safety Representative			
Firm Name:	Hunter Roberts Construction Group, LLC	Years of Experience:	22
Name:	Shane Skennoto	This Firm:	13
Title:	VP, Director of Safety	Other Firms:	9
Degree:	B.S., Occupational Safety and Hygiene Mngmnt	Specialization:	
Year Earned:	1998	Registration:	N/A
<p>Shane Skennoto is responsible for implementing the Hunter Roberts' Corporate Safety, Health, and Environmental Program &amp; Procedures and the approved Project Safety Manual. He supports a variety of projects at the field production level and corporate team to ensure the appropriate integration and timely availability of any needed specialty safety services. He also monitors subcontractors working on behalf of the Hunter Roberts team to guarantee adherence to our corporate safety standards. He is responsible to enforce, encourage and administer all phases of the company-wide and project specific safety, security, environmental protection, and industrial hygiene programs. Shane has documented authorization from Hunter Roberts' senior management to act on behalf of Hunter Roberts in all safety matters including the stoppage of any work when the safety or occupational health of workers is compromised. Shane has over 20 years in the safety industry. Prior to his employment with Hunter Roberts in 2007, he worked as the Senior Health and Safety Specialist for Sunoco, Inc., where he coordinated contractor safety training and verification to meet standards, managed on-site safety equipment vendors for multiple locations, evaluated, and implemented training programs. Shane also managed the night shift safety effort of 20 safety professionals for a \$500 million capital construction project; coordinated the intern program and supported contract administrators with field audits, training, injury follow up, and issue resolution.</p> <p><b>NYCEDC Facilities and Construction Management Retainer Contract, All Boroughs, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: NYCEDC, various subcontractors Lead a team of over forty professional staff, working closely with the Owner on projects from conception through completion. The EDC team provides Construction Management services for projects ranging from feasibility studies and estimates, through small volume short duration projects throughout New York City's five boroughs, to large scale multi-year projects with volumes ranging in the tens of millions.</p> <p><b>Queens Plaza Park, Long Island City, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: Durst Organization, various subcontractors A 950-unit, 1,000,000-SF residential building with a component of the units built as affordable housing. The project site also hosts a half-acre public park, a renovated entrance to the Queens Plaza subway station, and the adaptive reuse of the Landmarked Bank of Manhattan building.</p> <p><b>Garvies Point Phase I, Glen Cove, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: RXR Development, various subcontractors A new mixed-use community located along Hempstead Harbor. Phase I includes three residential buildings, consisting of 959,000 SF total. Two of the buildings each contain five floors of rental units while the third has six floors of condominiums. Amenities for the buildings include a green roof, parking garage and lots, swimming and spa pool, courtyard with fountain, and club house.</p> <p><b>NYPQ EES Separation of Power, Flushing, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: NYPQ, various subcontractors Upgrades and corrections to existing electrical system deficiencies currently present hospital-wide. Primary project objective to provide a new Type 1 Essential Electrical System (EES) to comply with NFPA 99, consisting of three electrical branches, life safety, and critical equipment, backed up with three generators as an emergency power source. Also includes new emergency electrical distribution room to house emergency ATS's and switchgear and seven new fire-protected electrical closets.</p> <p><b>MSK Nassau Regional Cancer Center, Uniondale, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: MSK, various subcontractors A new 105,000-SF, two-story outpatient treatment facility and pre-cast parking garage providing 450 spaces. Extensive site utility tie-ins. Programming includes radiology, lymphedema, infusion, radiation oncology with three LINACs, laboratory and quick treatment areas, office space, administration space, and public lobby/waiting areas. Targeting LEED certification.</p>			

Position/Assignment for the Project: M/WBE Coordinator			
Firm Name:	Hunter Roberts Construction Group, LLC	Years of Experience:	8
Name:	Krystin Hence	This Firm:	1
Title:	Estimator	Other Firms:	7
Degree:	M.S. City & Regional Planning, B.A. Urban Studies	Specialization:	
Year Earned:	2013/2011	Registration:	N/A
<p>Prior to her role as an Estimator, Krystin was instrumental in implementing NYCEDC's MWBE and ConstructNYC programs, working collaboratively with Construction Managers and NYCEDC's Opportunity MWDBE Group to not only meet contractual participation goals, but to promote a culture that encourages diverse and inclusive approaches to project delivery. As Estimator, Krystin is responsible for estimating construction costs of all building systems and acts as a client liaison during pre-construction. She coordinates between owners, architects, engineers and subcontractors to orchestrate a successful pre-construction product and sets each job up for project excellence. In addition, Krystin works with the operations teams on schedules, logistics, and scopes of work to ensure operational costs are built into the estimate. Krystin has over eight years of experience in the construction industry, largely focused on the design and construction of industrial campuses and waterfront infrastructure. Throughout her varying roles within the industry, Krystin has always found opportunities to serve as champion of disadvantaged businesses in advancement of NYC/NYS goals.</p> <p><b>South Nassau Communities Hospitals - Medical Arts Pavilion, Oceanside, NY</b> Project Role: Estimating Services, Duration: Pre-Construction, Firms Involved: HOK International Estimating Services, Constructibility Review and consultant selection for 15,000 sq ft medical office building and associated parking lot / site-work.</p> <p><b>NYCEDC Capital Program - Brooklyn Bridge Esplanade, New York, NY</b> Project Role: Estimating Services, Duration: Pre-Construction, Firms Involved: NYCEDC, HRCG, Starr Whitehouse Landscape Architects and Planners 1,500 linear feet of waterfront improvements to extend the East River Waterfront. Includes 12-ft walkway along the water, new pedestrian crossings and bike lanes, relocation of existing parking lot, plaza areas, seating and picnic tables, and Brooklyn Bridge viewing deck.</p> <p><b>Made in New York Campus, Brooklyn, NY</b> Project Role: Design and Construction Management, Duration: Design/Pre-Construction/Construction, Firms Involved: NYCEDC, Gilbane, Dewberry Companies Inc., nArchitects Transformation of the historic Bush Terminal into a 200,000-SF garment manufacturing / 160,000-SF light industrial manufacturing hub. Scope included interior renovations and MEPS upgrades, streetscape improvements, and public realm improvements across the nine acres of the campus.</p> <p><b>Brooklyn Army Terminal, Brooklyn, NY</b> Project Role: Design and Construction Management, Duration: Design/Pre-Construction/Construction, Firms Involved: NYCEDC, HRCG, Mancini Duffy, WXY Architecture and Urban Design Renovation of a 100-year-old military facility in Sunset Park, Brooklyn, transforming the campus into 55 acres of light industrial tenant space and public access to the waterfront. Scope included significant interior renovations, structural improvements, and MEPS upgrades to three large warehouse buildings; exterior façade restoration to all exteriors; new ferry shelter and ticketing space; and campus-wide sitework and landscaping improvements.</p> <p><b>New Fulton Fish Market, Bronx, NY</b> Project Role: Design and Construction Management, Duration: Design/Pre-Construction/Construction, Firms Involved: NYCEDC, McKissack &amp; McKissack Managed Capital improvements and on-going maintenance. Scope included installation of trench drains, over 1 million SF of parking lot resurfacing including concrete loading pads, retrofitting of loading docks for cold storage, façade and roof replacement, fire alarm replacement, bathroom renovations, and interior fit-out of office spaces.</p> <p><b>Red Hook Integrated Flood Protection System, Brooklyn, NY</b> Project Role: Project Manager, Duration: Feasibility/Design, Firms Involved: NYCEDC, Dewberry Companies Inc. Coastal protection in response to Hurricane Sandy. Included feasibility study, environmental review, and design.</p> <p><b>New York City Select Bus Service, City-wide, NY</b> Project Role: Project Coordination, Duration: Design/Pre-Construction, Firms Involved: NYCDOT, MTA-NYCT Roadway and streetscape work - including utility relocation, sidewalk reconstruction, and installation of pavement, bus shelters, traffic signals, and signage - for New York City's new rapid bus system.</p>			

**EXHIBIT 10**

**Project Site**



**EXHIBIT 11 – N/A<sup>1</sup>**

**Form of Guarantee**

This Guarantee (the “**Guarantee**”), is made as of [●], by [\_\_\_\_\_] a [\_\_\_\_\_] existing under the laws of [\_\_\_\_\_] (the “**Guarantor**”), for the benefit of the City of New York, a municipal corporation organized under the laws of the State of New York (“the **City**”), acting by and through its Department of Design and Construction (the “**DDC**”), an agency of New York City.

**RECITALS:**

- (A) The DDC and [\_\_\_\_\_] [[a [\_\_\_\_\_] [\_\_\_\_\_] of (1) [\_\_\_\_\_] a [\_\_\_\_\_] existing under the laws of [\_\_\_\_\_] and (2) [\_\_\_\_\_] a [\_\_\_\_\_] existing under the laws of [\_\_\_\_\_] the “**Design-Builder**”), entered into that Design-Build Agreement dated as of [\_\_\_\_\_] 20[●] (as may be modified, amended or supplemented at any time, the “**DB Agreement**”) for design and construction of the Project;
- (B) [[\_\_\_\_\_] a [\_\_\_\_\_] organized and existing under the laws of [\_\_\_\_\_] is a [\_\_\_\_\_] member of the Design-Builder (the “**DB Member**”), and as the [parent company][Affiliate] of the DB Member, the Guarantor is willing to enter into this Guarantee to guarantee the Design-Builder’s performance of its obligations under the DB Agreement;]
- (C) Section 4.1 of the DB Agreement requires that this Guarantee be executed and delivered by the Guarantor on or before the date of execution of the DB Agreement as an inducement for DDC to enter into the DB Agreement; and
- (D) Guarantor has agreed to enter into this Guarantee in consideration for financial and direct or indirect benefits which will accrue to Guarantor by virtue of Design-Builder entering into the DB Agreement and that such benefits constitute adequate consideration therefor.

**THE GUARANTOR AND THE DDC AGREE** as follows:

**1. DEFINITIONS**

Capitalized terms not otherwise defined in this Guarantee will have the meaning given to them in the DB Agreement.

**2. GUARANTEE**

- (a) Guarantor irrevocably, absolutely and unconditionally guarantees to the City, its successors and permitted assigns, as primary obligor and not merely as surety:
  - (i) the full and punctual performance of each and all obligations (including all warranties, covenants, duties, terms, obligations and agreements to be performed or observed, as applicable);
  - (ii) the full and punctual payment to the City when due of each and all of the payment obligations and liabilities of the Design-Builder,

<sup>1</sup> Design-Builder was not required to provide a Guarantee as a condition of entering in to this Agreement.  
New York City Department of Design and Construction  
Exhibit 11 (Form of Guarantee) Design-Build Agreement

in each case under the DB Agreement and all other present or future agreements and instruments existing at any time between the DDC and the Design-Builder in connection with the performance of the DB Agreement (these obligations of the Design-Builder collectively the “**Obligations**”). The obligations of Guarantor under this Guarantee are independent of the Obligations.

- (b) This Guarantee is a continuing guarantee, and will apply to all Obligations whenever arising, and will remain in full force and effect until, subject to Section 6 (*Guarantee Not Affected*) and Section 15 (*Reinstatement of Guarantee*), all of the Obligations have been irrevocably performed and paid in full.
- (c) If at any time the Design-Builder defaults in the payment or performance when due of any of the Obligations, Guarantor will, upon demand by the DDC, promptly pay or perform the Design-Builder’s Obligations as if the Guarantor instead of the Design-Builder were expressed to be the principal obligor, or cause the payment or performance of, those Obligations.
- (d) Except as otherwise expressly provided in this Guarantee:
  - (i) the liability of Guarantor under this Guarantee will not be greater than that of the Design-Builder under the DB Agreement (other than with respect to Guarantor’s obligation under this Guarantee to reimburse the DDC for its costs and expenses in enforcing this Guarantee, if any, in accordance with Section 5 (*Costs and Expenses*));
  - (ii) Guarantor will be entitled to the benefit of all limitations on the Design-Builder’s liability specified in the DB Agreement; and
  - (iii) Guarantor may, as a defense to the performance of the Obligations, assert any defense available to the Design-Builder under the DB Agreement that would excuse the Design-Builder from performing the Obligation against which a claim is made under this Guarantee.

**3. NATURE OF GUARANTOR’S PERFORMANCE OBLIGATIONS**

- (a) To the extent Guarantor’s obligations under this Guarantee relate to Obligations that require performance other than the payment of money, the DDC may proceed against Guarantor to effect specific performance of those Obligations (to the extent available) or for payment of damages or any amounts due under the DB Agreement resulting from the Design-Builder’s breach of the DB Agreement or failure to perform any Obligation.
- (b) If the DB Agreement is disaffirmed by the trustee in bankruptcy for the Design-Builder, at the option of the DDC, Guarantor must make and enter into a new contract (to perform or cause to be performed the balance of the Obligations which must, unless otherwise agreed by the DDC, be in form and substance identical to the DB Agreement).

**4. PAYMENTS**

All payments by Guarantor to the City must be made in the United States in United States Dollars and must be paid within five Business Days after receipt by Guarantor from the DDC of written demand for payment, and will not be subject to any offset against any amounts that may be owed by the City to Guarantor for any reason unrelated to the Project.

**5. COSTS AND EXPENSES**

Guarantor agrees to pay all costs, expenses and fees that may be incurred by the City in enforcing this Guarantee, whether by suit or otherwise, to the extent the City is the prevailing party with respect to a substantial portion of its claim.

**6. GUARANTEE NOT AFFECTED**

The obligations of Guarantor will not be affected, modified, impaired or prejudiced by any act, omission, matter or thing that would or might under applicable law (but for this Section 6) constitute a whole or partial defense to a claim against Guarantor or operate to release (without limitation) Guarantor from its obligations or liability, or any portion of them, under this Guarantee, including (without limitation):

- (a) any security held at any time by the DDC as security for the Obligations;
- (b) any proceeding, voluntary or involuntary, involving the winding up, dissolution, administration, bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement or similar proceeding of the Design-Builder, or by any defense that the Design-Builder may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding;
- (c) any modification to or termination of the DB Agreement or rejection of the DB Agreement in bankruptcy;
- (d) any right to require the DDC to proceed against the Design-Builder or any other person or to proceed against or exhaust any security held by the DDC at any time or to pursue any other remedy in the DDC's power before proceeding against Guarantor;
- (e) any defense based upon any right of setoff, counterclaim or other right, defense, or claim based on, or in the nature of, any obligation now or later owed to the Guarantor by the Design-Builder or any other person;
- (f) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or the failure of the DDC to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person;
- (g) promptness, diligence, demand, presentment, protest and notice of any kind, including notice of the existence, creation or incurring of any new or additional Obligations or of any action or non-action on the part of the Design-Builder, the DDC, any creditor of the Design-Builder or Guarantor or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by the DDC as collateral or in connection with any Obligations guaranteed by this Guarantee;
- (h) any defense based upon an election of remedies by the DDC that destroys, releases or otherwise impairs the subrogation, exoneration, contribution or indemnification rights of Guarantor or the right of Guarantor to proceed against the Design-Builder for reimbursement;
- (i) any defense based on the invalidity, illegality, nonbinding effect or unenforceability of (A) the Obligations or (B) the DB Agreement, with the intent that the Guarantor's obligations

under this Guarantee will remain in full force and be enforceable as if there were no invalidity, illegality, nonbinding effect or unenforceability;

- (j) any duty on the part of the DDC to disclose to Guarantor any facts the DDC may know at any time about the Design-Builder, regardless of whether the DDC has reason to believe that these facts materially increase the risk beyond that which Guarantor intends to assume, or has reason to believe that these facts are unknown to Guarantor, or has a reasonable opportunity to communicate these facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of the Design-Builder and of all circumstances bearing on the risk of non-payment of any Obligations guaranteed by this Guarantee;
- (k) any defense arising because of the exercise of any right or remedy available to, or election made by, the DDC pursuant to the U.S. Bankruptcy Code, whether as an unsecured or undersecured creditor, seeking adequate protection, or otherwise; and
- (l) Guarantor's failure to remain an Affiliate of Design-Builder

## 7. **WAIVER OF SUBROGATION; SUBORDINATION**

- (a) Guarantor irrevocably and absolutely waives, at all times prior to the Obligations being irrevocably paid or performed in full, any and all right of subrogation, contribution, indemnification, reimbursement or similar rights against the Design-Builder with respect to the Guarantee, whether these rights arise under an express or implied contract or by operation of law. Guarantor and the DDC intend that, at all times prior to the Obligations being irrevocably paid or performed in full, Guarantor will not be deemed to be a "creditor" (as defined in section 101 of the U.S. Bankruptcy Code or any other applicable law) of the Design-Builder by reason of the existence of this Guarantee in the event that the Design-Builder becomes a debtor in any proceeding under the U.S. Bankruptcy Code or any other applicable law.
- (b) In addition, Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guarantee by any payment made under this Guarantee or otherwise, until all of the Obligations have irrevocably been paid or performed in full. If any amount is paid to Guarantor on account of any subrogation rights at any time when these liabilities and obligations have not been irrevocably paid in full, that amount will be held in trust for the benefit of the DDC and will be paid to the DDC and applied to such liabilities and obligations, whether matured or unmatured.
- (c) All existing or future indebtedness of the Design-Builder to the Guarantor is subordinated to all of the Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance or payment of any Obligation, no payments with respect to any such indebtedness shall be made by the Design-Builder to the Guarantor without prior written notice to the DDC.

## 8. **BANKRUPTCY PROCEEDINGS**

To the greatest extent permitted by Applicable Law, so long as any Obligations are owed to the DDC, Guarantor may not, without the prior written consent of the DDC, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against the Design-Builder. With DDC's consent, the Guarantor shall file all claims against the Design-Builder in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law

upon any obligation or indebtedness of the Design-Builder to the Guarantor, and shall have assigned to the DDC all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Obligations. If the Guarantor does not file any such claim, the DDC is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of the DDC, the DDC is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Design-Builder or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the DDC or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the DDC all of its respective rights to any payments or distributions to which it otherwise would be entitled.

9. **NO MARSHALING**

- (a) The City will not be required to marshal any collateral securing, or any guaranties of, the Obligations, or to resort to any item of collateral or any guarantee in any particular order, and the City's rights with respect to any collateral and guaranties will be cumulative and in addition to all other rights, however existing or arising.
- (b) Guarantor irrevocably waives, and agrees that it will not invoke or assert, any rights or remedies under any law requiring or relating to the marshaling of collateral or guaranties or any other law which might cause a delay in or impede the enforcement of the City's rights under this Guarantee or any other agreement.

10. **NO THIRD-PARTY RIGHTS**

This Guarantee is made for the benefit of the City (and its successors and assigns), and nothing contained in this Guarantee is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Guarantor toward, any other Person not expressly identified under this Guarantee.

11. **SUCCESSORS AND ASSIGNS**

Guarantor may not make an assignment or other transfer of this Guarantee or any interest in this Guarantee for any reason at any time, including by operation of law, unless it has obtained the prior written consent of the DDC to such assignment or other transfer. As provided in Section 10, no right of action will accrue to any third party under this Guarantee other than the City's successors and assigns.

12. **NOTICES**

All notices to the parties to this Guarantee that must be served under this Guarantee must be in writing and be served by registered mail or sent by facsimile or other means of generally accepted electronic transmission, followed by a hard copy and with receipt confirmed by return email, and must be addressed as follows:

- [ ]
- [ ]
- [ ]
- [ ]

[ ]

or at another address that the party may designate in writing.

13. **GOVERNING LAW, DISPUTES JURY WAIVER AND CONSENT TO JURISDICTION**

- (a) This Guarantee will be governed by and interpreted in accordance with the laws of the State of New York governing contracts, without regard to its choice of law provision.
- (b) Section 13(a) does not apply to any claims between the Guarantor and the City that do not arise under this Guarantee or the DB Agreement (including claims in tort or any other non-contractual claims)
- (c) **JURY WAIVER.** EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH ANY DISPUTE. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.
- (d) Any Disputes arising under or related to the Obligations, the DB Agreement or this Guarantee must be resolved in accordance with the Dispute Resolution Procedures of the DB Agreement.
- (e) Subject to first exhausting the Dispute Resolution Procedures, each Party irrevocably submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in the City and County of New York, and any appellate court thereof, for the settlement of any Dispute. The New York courts are the most appropriate and convenient courts to settle any such Dispute and each of the Parties to this Guarantee waive objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- (f) If any person appointed by Guarantor as process agent is unable to act as agent for service of process, Guarantor must immediately appoint another agent on terms acceptable to the DDC, and the DDC may appoint another agent for this purpose if Guarantor fails to do so. Guarantor agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.
- (g) Guarantor agrees that final judgment against it in one jurisdiction in any action or proceeding may be enforced in any other jurisdiction by suit on the judgment, a certified or exemplified copy of which will be conclusive evidence of the fact and the amount of the judgment. Any finding of fact by, and any interim or award or decision made by the Disputes Review Board (and accepted by DDC and the Design-Builder), or a court or tribunal with jurisdiction over a claim arising under the DB Agreement will be binding on the Guarantor to the same extent that it is binding on the City for the purposes of this Guarantee.
- (h) The City may bring and prosecute a separate action or actions against Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against Design-Builder and regardless of whether any other person is joined in any such action or actions.

14. **REPRESENTATIONS AND WARRANTIES**

Guarantor represents and warrants to the City that:

(a) **Existence and Good Standing**

Guarantor is duly organized, validly existing and in good standing under the laws of its state of organization. Guarantor is [a [in]direct parent][Affiliate] of Design-Builder.

(b) **Power and Authority**

Guarantor has the power and authority to execute, deliver and perform its respective obligations under this Guarantee.

(c) **Authorization**

Guarantor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of their obligations under, this Guarantee, and each Person executing this Guarantee on behalf of Guarantor has been (or at the time of execution will be) duly authorized to execute and deliver each document on behalf of Guarantor.

(d) **Enforceability**

This Guarantee is the legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, subject to the application of bankruptcy and similar laws and of general equitable principles.

(e) **No Contravention**

The execution, delivery and performance by Guarantor of this Guarantee does not (and at the time of execution will not):

- (i) conflict with or result in a default under or a violation of:
  - (A) the constituent or organizational documents of Guarantor;
  - (B) any other material agreement or instrument to which Guarantor is a party or that is binding on Guarantor or any of its respective assets; or
  - (C) any Applicable Law;
- (ii) constitute an event that would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guarantee; or
- (iii) constitute an event that would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guarantee.

(f) **No Litigation**

There is no action, suit, proceeding, investigation or litigation pending or served on Guarantor to Guarantor's knowledge that:

- (i) could reasonably be expected to have a material adverse effect on the ability of Guarantor to perform its obligations under this Guarantee;
- (ii) challenges Guarantor's authority to execute, deliver or perform, or the validity or enforceability of, this Guarantee; or
- (iii) challenges the authority of Guarantor's representative executing this Guarantee.

(g) **Financial Information**

It will timely provide to DDC any financial information required of a Guarantor under the DB Agreement, including any information required under Section 44.1(o) (*Guarantor Financial Conditions*).

(h) **Financial Statements**

All financial statements and data that have been given to DDC by the Guarantor with respect to the Guarantor: (A) are complete and correct in all material respects as of the date given; (B) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (C) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

(i) **No Adverse Change**

There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to the Design-Builder with respect to the Guarantor. The Guarantor shall advise the DDC in writing of any material adverse change in the respective business or financial condition of the Guarantor and promptly furnish to the DDC such information about the financial condition of the Guarantor as the DDC shall reasonably request.

15. **REINSTATEMENT OF GUARANTEE**

- (a) This Guarantee will be reinstated if, at any time following the purported satisfaction of all Obligations, any payment by Guarantor or the Design-Builder of the Obligations is rescinded or must otherwise be returned by the DDC or other Person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Design-Builder, Guarantor or otherwise, and is actually rescinded or returned to the party or parties making the payment, all as though the payment had not been made. This period of reinstatement will continue until full satisfaction of the Obligations and will continue to be subject to this Section 15.
- (b) This Guarantee will remain in effect despite any assignment of the DB Agreement to any Person. Upon request by the DDC after any assignment, Guarantor must acknowledge the continuing effectiveness of this Guarantee despite the assignment.

16. **SEVERABILITY**

- (a) If any clause, provision, section, subsection or part of this Guarantee is ruled invalid (including due to a Change in Law) by a court having proper jurisdiction, the parties to this Guarantee must:

- (i) promptly (and in any event within 10 Business Days) after the ruling, meet and negotiate a substitute for the clause, provision, article, section or part that will, to the greatest extent legally permissible, effect the original intent of the parties to this Guarantee; and
  - (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared the invalidity for an interpretation of the invalidated portion to guide the negotiations.
- (b) The invalidity or unenforceability of any clause, provision, article, section, subsection or part will not affect the validity or enforceability of the balance of this Guarantee, which will be construed and enforced as if this Guarantee did not contain the invalid or unenforceable clause, provision, article, section, subsection or part.

**17. NO WAIVER**

- (a) No waiver of any term, covenant or condition of this Guarantee will be valid unless in writing and executed by the DDC.
- (b) The DDC's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Guarantee at any time will not in any way limit or waive the DDC's right to subsequently enforce or compel strict compliance with every term, covenant, condition or other provision of this Guarantee, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of the waivers). The rights and remedies provided in this Guarantee are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law.
- (c) If the parties to this Guarantee make and implement any interpretation of this Guarantee without documenting their interpretation by an instrument in writing signed by all of the parties, the interpretation and implementation will not be binding in the event of any future disputes.

**18. MERGERS ETC.**

The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person or group of affiliated persons, unless:

- (a) in case of a merger, the Guarantor shall be the continuing corporation; or
- (b) the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the DDC.

- (c) Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by prior written consent of the DDC.

19. **COUNTERPARTS**

This Guarantee may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one and the same document.

20. **ENTIRE AGREEMENT**

This Guarantee contains the entire understanding of the DDC and Guarantor with respect to the subject matter of this Guarantee and supersedes all prior agreements, understandings, statements, representations and negotiations between the DDC and Guarantor with respect to their subject matter.

***[Signature Page Follows]***

The Guarantor and the DDC have executed this Guarantee as of the date written above.

GUARANTOR

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGED BY: THE CITY OF NEW YORK, BY AND THROUGH THE  
DEPARTMENT OF DESIGN AND CONSTRUCTION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 12**  
**Disputes Review Board**

## PART A

### FORM OF DISPUTES REVIEW BOARD AGREEMENT

**THIS DISPUTES REVIEW BOARD AGREEMENT (“DRB Agreement”)** is made and entered into this [•] day of [•], 202[•], among the City of New York (the “**City**”), acting by and through its Department of Design and Construction (the “**DDC**”), [•] (the “**Design-Builder**”), and [INSERT BOARD MEMBER NAMES] (each a “**Board Member**,” and collectively, the “**Board Members**”), with reference to the following facts:

- (A) The DDC and the Design-Builder have entered into that certain Design-Build Agreement dated [•] (the “**Agreement**”). Pursuant to the Agreement, the Design-Builder has agreed, among other things, to design, construct, and commission the BBJ Queens Site Parking Garage Project (the “**Project**”).
- (B) Article 41 (*Dispute Resolution Procedure*) of the Agreement provides for the establishment and operation of a Disputes Review Board (the “**Board**”) to assist in resolving any Dispute that may arise among the DDC, the Design-Builder and others in respect to the Project.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants and agreements contained in this DRB Agreement, the signatories to this DRB Agreement agree as follows:

#### 1. ESTABLISHMENT OF DISPUTE REVIEW BOARD

- (a) The Board will constitute and begin operation upon execution of this DRB Agreement by the DDC, the Design-Builder and all three Board Members. This DRB Agreement and the Board Members’ tenure will terminate on the earlier of (i) early termination of the Agreement and (ii) expiration of a hearing commenced within [twenty-four] months after Final Completion (unless otherwise extended or terminated in accordance with this DRB Agreement or applicable law).
- (b) Each Board Member represents, warrants and covenants on their behalf that they comply with the criteria and limitations for membership described in Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement.
- (c) All three Board Members must have submitted and received approval of disclosure statements according to the requirements of Section 4 of Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement.
- (d) If during the term of this DRB Agreement, a Board Member has a discussion regarding employment or enters into any agreement for employment with the DDC or the City of New York, the Design-Builder or a Design-Builder Party, the Board Member must immediately disclose such discussion or agreement to both the DDC and the Design-Builder, and the Board Member will be disqualified from serving on the Board.

#### 2. BOARD RESPONSIBILITIES

- (a) The Board will fairly and impartially consider and provide written decisions for resolution of Disputes in accordance with Article 41 (*Dispute Resolution Procedure*) of the Agreement and Part 2 (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement. The Board Members will perform the services necessary to participate in the Board’s actions in accordance with this DRB Agreement.

- (b) Board Members will be kept informed of Project-related activities and other developments by means of quarterly progress reports, and other relevant information prepared by the DDC and the Design-Builder. Board Members will also attend material progress meetings not more frequently than quarterly to keep informed of construction progress and any circumstances that could form the basis of a Dispute.
- (c) All Board Members are to act independently in the consideration of facts and conditions surrounding any Dispute. Seeking the Board Members' advice or consultation, *ex parte*, is expressly prohibited; provided, however, that either the DDC or the Design-Builder may seek such advice or consultation or a non-binding advisory opinion from the entire Board, at a Board meeting, after first giving notice to all interested parties. A Board Member who has *ex parte* contact with the DDC or the Design-Builder or a representative of either Party may be subject to disqualification and removal from the Board.
- (d) Board Members may withdraw from the Board upon delivery of written notice of withdrawal to the DDC, the Design-Builder and the other Board Members, which notice must specify a withdrawal date at least thirty days following the date of delivery of such notice. In addition, a Board Member may be disqualified from serving on the Disputes Review Board, as set forth in Section 8 of Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement. Should the need arise to appoint a replacement Board Member, the replacement member will be appointed in the same manner as provided by the Agreement for appointment of the original member. The selection of a replacement Board Member will begin promptly upon notification of the necessity for a replacement and must be completed within thirty days thereafter. The change in Board membership will be evidenced by the new Board Member's signature on this DRB Agreement.
- (e) The personal services of the Board Member are a condition to receiving payment under this DRB Agreement. No Board Member will assign any of their work pursuant to this DRB Agreement without the prior written consent of both the DDC and the Design-Builder.
- (f) Subject to any requirements under law, each Board Member will keep matters related to the DRB Agreement and the Board confidential.
- (g) Each Board Member, in the performance of their duties on the Board, is acting as an independent contractor and not as an employee of either the DDC or the Design-Builder. No Board Member will be entitled to any employee benefits.

### 3. HEARINGS AND DECISIONS

- (a) Each Dispute under the Agreement must be heard and decided by the Board in accordance with the procedures and timelines established in Section 41.4 (*Disputes Review Board*) of the Agreement and as set forth in Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement.
- (b) Within the limits set by Section 41.4 (*Disputes Review Board*) of the Agreement, the Board will have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures.

### 4. PROVISION OF DOCUMENTS TO BOARD

- (a) The DDC must furnish to each Board Member one copy of Project-related documents in accordance with Section 9(b)(1) of Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement.
- (b) The Design-Builder must furnish to each Board Member one copy of all Project-related documents it might have, other than those furnished by the DDC, in accordance with Section 9(a)(2) of Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement.

**5. PAYMENT**

- (a) The Design-Builder will pay all of the costs related to the services rendered by each Board Member in accordance with Section 10 of Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement.
- (b) Invoices for payment for Board Member work completed under this DRB Agreement will be submitted monthly. Such invoices will be in a format approved by the DDC and the Design-Builder and accompanied by a general description of activities performed during the relevant period. The value of work accomplished for payment will be established from the billing rate and hours expended by the Board Member together with direct, reasonable, non-salary expenses. Billings for expenses will include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.
- (c) Each Board Member must keep available for inspection, for a period of six years after final payment, the cost records and accounts pertaining to this DRB Agreement.

**6. MISCELLANEOUS**

- (a) This DRB Agreement will commence upon execution of this DRB Agreement by the DDC, the Design-Builder, and all three Board Members, subject to the right of the DDC and the Design-Builder to terminate the services of Board Members as specified in this DRB Agreement.
- (b) Capitalized terms used but not defined in this DRB Agreement will have the meanings set forth in the Agreement.
- (c) The parties to this DRB Agreement intend for Article 41 (*Dispute Resolution Procedures*) of the Agreement and Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement and the other terms of this DRB Agreement to be complementary. Except as otherwise specifically provided in this DRB Agreement, in the event of any conflict between this DRB Agreement and said Article 41 (*Dispute Resolution Procedures*) of the Agreement and Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement, Article 41 (*Dispute Resolution Procedures*) of the Agreement and Part B (*Disputes Review Board Procedures*) of Exhibit 12 to the Agreement, will control.
- (d) Notices under this DRB Agreement must be sent as provided in Article 43 (*Notices and Communications*) of the Agreement. The addresses for the Board Members are set forth on the signature pages of this DRB Agreement.
- (e) Each Party irrevocably submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in the City and County of New York, and any appellate court thereof, for the settlement of any Dispute. The New York courts are the most appropriate and

convenient courts to settle any such Dispute and each of the Parties to this Agreement waive objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

- (f) **JURY WAIVER.** EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH ANY DISPUTE. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.
- (g) The Design-Builder irrevocably appoints [ ] as its agent for service of process in any proceedings before any court located in the State of New York. Each of the Board Members irrevocably appoints the person named below as its respective agent for service of process in any proceedings before any court located in the State of New York:
  - (i) [Board Member #1] \_\_\_\_\_ irrevocably appoints \_\_\_\_\_ as its agent for service of process;
  - (ii) [Board Member #2] irrevocably appoints \_\_\_\_\_ as its agent for service of process; and
  - (iii) [Board Member #3] irrevocably appoints \_\_\_\_\_ as its agent for service of process.
- (h) If any person appointed as process agent is unable for any reason to act as agent for service of process, the Design-Builder or the Board Member must immediately appoint another agent on terms acceptable to the DDC. Failing this, the DDC may appoint another agent for this purpose. The Design-Builder and each of the Board Members agrees that failure by its respective process agent to notify it of any process will not invalidate the relevant proceedings. This clause does not affect any other method of service allowed by law.
- (i) This DRB Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles.

**IN WITNESS WHEREOF**, the parties to this DRB Agreement have executed this DRB Agreement as of the day and year first above written.

**[Signature Pages Follow]**

This DRB Agreement is executed by the Parties as of the date written at the beginning of this DRB Agreement.

**DESIGN-BUILDER**

**[DESIGN-BUILDER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE CITY OF NEW YORK,**  
By and through **THE DDC,**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Board Member \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Board Member \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Board Member \_\_\_\_\_

## PART B

### DISPUTES REVIEW BOARD PROCEDURES

#### 1. ESTABLISHMENT OF THE DISPUTES REVIEW BOARD

##### (a) Purpose

The Parties will establish the Disputes Review Board to provide special expertise and assist in, and facilitate, the timely and equitable resolution of Disputes between the DDC and the Design-Builder as set forth under Article 41 (*Dispute Resolution Procedure*) of the Agreement and the Disputes Review Board Agreement.

##### (b) Board Membership

**Composition.** The Disputes Review Board will consist of three Board Members, selected as follows, with minimum qualifications set forth in Sections 2 and 3 of this Part B of Exhibit 12:

- (i) one member selected by the DDC (“**Member 1**”);
- (ii) one member selected by the Design-Builder (“**Member 2**”); and
- (iii) a third member, selected in accordance with Section 6 of this Part B of Exhibit 12 (“**Member 3**”) (each a “**Board Member**”, and collectively, the “**Board Members**”). The third member will serve as the chair of the Disputes Review Board.

Once established, the Disputes Review Board will remain active and in full force and effect until all Disputes submitted to such Disputes Review Board have been decided by it, or as otherwise specified in the Disputes Review Board Agreement.

##### (c) Neutral and Impartial

The Board Members of the Disputes Review Board must be neutral, act impartially, and not have any conflict of interest (as further detailed in Section 3 of this Part B of Exhibit 12).

#### 2. EXPERIENCE CRITERIA FOR DISPUTES REVIEW BOARD MEMBERS AND TECHNICAL ADVICE

Each Board Member must be an engineer, architect or attorney licensed in at least one state within the United States and a nationally recognized expert in matters pertinent to a project of a similar size, type and complexity as the Project.

In addition, the chair of the Disputes Review Board will be a nationally recognized expert in matters pertinent to the resolution of commercial disputes and will have served on at least one Disputes Review Board, preferably as chair.

The Disputes Review Board may appoint a nationally recognized technical advisory firm qualified and experienced in design-build methodology and with significant experience in large-scale vertical construction projects in New York City. The firm appointed will be available at all times to advise the Disputes Review Board, solely on technical issues that are relevant to any Dispute before the

Disputes Review Board. The costs of the technical advisory firm will be approved in advance and borne by the DDC and the Design-Builder, equally.

The Disputes Review Board may also appoint a nationally recognized law firm licensed to practice in the State of New York and with significant experience mediating disputes involving in large-scale vertical construction projects in New York City. If appointed, this firm will be available at all times to advise the Disputes Review Board, solely on legal issues that are relevant to any Dispute before the Disputes Review Board. The costs incurred by the law firm will be approved in advance and borne by the DDC and the Design-Builder, equally.

### 3. **ADDITIONAL CRITERIA APPLICABLE TO DISPUTES REVIEW BOARD MEMBERS**

In addition to the criteria set out above, the criteria for membership for all Board Members of the Disputes Review Board are the following:

- (a) no Board Member will have an ownership interest in any party involved in the Agreement, or a financial interest in the Agreement, except for payment for services on the Disputes Review Board; provided, that for purposes of determining conflicts of interests and disqualification, the term Board Member will include the Board Member's current primary or full-time employer, and involved will mean having a contractual relationship with the DDC or the Design-Builder at any tier;
- (b) except for fee-based consulting services on other projects, no Board Member will have been previously employed by, or have had financial ties to, any Party involved in the Agreement within a period of eight (8) years prior to award of the Agreement;
- (c) no Board Member will have provided to either Party fee-based consulting services within the two (2) years prior to award of the Design-Build Agreement, where the consulting fees paid by that Party have exceeded 20% of that member's total consulting revenue in either year;
- (d) no Board Member will have had a close professional or personal relationship with any key member of any Party involved in the Design-Build Agreement, including, for the avoidance of doubt, the City, which, in the judgment of either Party, could suggest partiality, or give an appearance of impropriety;
- (e) no Board Member will have had prior involvement in the Project;
- (f) each Board Member will have completed any disputes review board training course provided by the DDC for the Project;
- (g) during their tenure as a member of the Disputes Review Board, no Board Member will be employed, including fee-based consulting services, by any Party involved in this Agreement except with express approval of both Parties;
- (h) during their tenure as a member of the Disputes Review Board, no Board Member will engage in any discussion or make any agreement with any Party regarding employment after the Project is completed; and
- (i) no Board Member will currently be a member of any other Disputes Review Board that involves issues related to the Party who did not appoint such Board Member.

**4. DISCLOSURE STATEMENT**

Before their appointments to the Disputes Review Board are final, prospective Member 1 and Member 2 must submit complete disclosure statements for the approval of both the DDC and the Design-Builder. Each statement will include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships (including indirect relationships through the prospective member's primary or full-time employer) to the Project and with all Parties involved in this Agreement. This disclosure must also include any financial relationship relative to the criteria in Section 3 of this Part B of Exhibit 12, and disclosure of close relationships, either professional or personal, with all key personnel of all Parties to the Agreement. Member 3 of the Disputes Review Board must supply such a disclosure statement to Member 1 and Member 2 and to the DDC and the Design-Builder before their appointment is final and a written certification of no conflicts of interests as required by the DDC.

**5. SELECTION OF MEMBER 1 AND MEMBER 2**

The DDC will select a proposed Member 1 and the Design-Builder will select a proposed Member 2 for the Disputes Review Board and convey the selected Board Member's name and reference information to the other Party within fifteen Business Days after execution of the Agreement. If either Party reasonably believes that the Board Member appointed by the other Party does not meet the criteria for membership as set forth in this Part B of Exhibit 12, that Party will notify the other Party of such failure and the reasons therefor and the Parties will agree either on an alternative Board Member or to resolve such discrepancy regarding qualifications.

**6. NOMINATION AND APPROVAL OF MEMBER 3**

Immediately after the DDC and the Design-Builder's selections for the Disputes Review Board are final, the Parties will agree on a list of at least five proposed Board Members acceptable to the Parties and that satisfy the requirements in this Exhibit 12. Member 1 and Member 2 will select Member 3 from the pre-qualified list within fourteen Business Days thereafter and will ensure that Member 3 meets all the relevant criteria listed above. If Member 1 and Member 2 do not select Member 3 within such fourteen-day period, the DDC will unilaterally make a selection from the pre-qualified list.

**7. EXECUTION OF THREE-PARTY AGREEMENT**

The DDC, the Design-Builder and all Board Members of the Disputes Review Board will execute a Disputes Review Board Agreement substantially in the form attached as Part 1 (*Form of Disputes Review Board Agreement*) of this Exhibit 12, within fourteen Business Days after selection of Member 3.

**8. DISQUALIFICATION AND REPLACEMENT OF BOARD MEMBERS**

In the event that:

- (a) any Board Member has a discussion regarding employment or enters into any employment agreement with the Design-Builder, the City or any Other Contractor on the Project during their tenure on the Disputes Review Board;
- (b) any Board Member is discovered not to meet the relevant qualifications set forth in this Exhibit 12; or

- (c) any Board Member cannot continue to serve because of death, illness or permanent disability;

that Board Member will be disqualified (and may be dismissed at the discretion of either Party) from serving on the Disputes Review Board. In the event of such a disqualification, a replacement Board Member meeting the qualifications in this Exhibit 12, will be selected by the DDC if the disqualified Board Member was Member 1, by the Design-Builder if the disqualified Board Member was Member 2 or by Member 1 and Member 2, from the pre-qualified list described above, if the disqualified Board Member was Member 3.

## 9. DDC AND DESIGN-BUILDER RESPONSIBILITIES

### (a) Generally

- (i) Except for their respective participation in the Disputes Review Board's activities as provided in the Disputes Review Board Agreement, neither Party will solicit advice or consultation from the Disputes Review Board or any Board Member on matters dealing in any way with the Project, the conduct of the Work or the resolution of problems.
- (ii) Both Parties must furnish to the Disputes Review Board a set of all documents deemed pertinent by each Party and which become necessary or relevant for the Disputes Review Board to perform its function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents used in the performance of the Work or in justifying or substantiating the relevant Party's position regarding a Dispute. Both Parties must furnish a copy of such documents to each other. Both Parties, in cooperation with each other, will coordinate the operations of the Disputes Review Board.

### (b) DDC's Responsibilities

The DDC must furnish the following services and items:

- (i) **Contract-Related Documents:** The DDC will furnish the Disputes Review Board and the Design-Builder a copy of all Contract Documents and all written instructions issued by the DDC to the Design-Builder.
- (ii) **Coordination and Services:** The DDC may arrange or provide conference facilities at or near the Project Site (in a mutually agreed location), provide any Disputes Review Board training course, for the Project, and provide secretarial and copying services for the Disputes Review Board.

### (c) Reports to the Disputes Review Board

The DDC and the Design-Builder will provide the Board Members with quarterly progress reports in order to keep the Disputes Review Board informed of Project-related activities and other developments.

## 10. BASIS OF PAYMENT

The Design-Builder will be responsible to pay the fees and expenses of the DRB, after approval by both parties, and the Design-Builder will then invoice the DDC for 50% of the payment it made to

DRB Members in accordance with the payment provisions for any Monthly Payment under the Agreement.

The DDC will prepare and distribute minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services for meetings with the Disputes Review Board for any Dispute hearing, and will bear the cost of these services. If the Disputes Review Board desires special services, such as, but not limited to, legal or technical consultation, accounting, and data research, both Parties must agree, and the costs will be shared by them as mutually agreed.

## **PART C**

### **DISPUTE NOTIFICATION**

Any Dispute Notification must include, at least the following:

1. the names of any individuals who are said to have knowledge about the Dispute;
2. the descriptions of any documentary evidence of the Dispute (or, alternatively, the source of such evidence);
3. the date of the act, inaction or omission giving rise to the Dispute;
4. an explanation of the Dispute, including a description of its nature, circumstances and cause;
5. references to any relevant provisions from the Contract Documents;
6. if applicable, the estimated dollar value of any damages incurred or to be incurred, and how that estimate was determined (including any cost and revenue element that has been, or may be, affected);
7. if applicable, an analysis of the Project Schedule and Completion Milestones showing any changes or disruptions to critical path items (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been, or will, cause delays in the Project Schedule, staging, and adjusted Completion Milestones);
8. if applicable, the disputing Party's plan for mitigating the damages suffered and the length of any delay claimed;
9. certification by the disputing Party that the Dispute is being made in good faith, that to the best knowledge of the disputing Party, all matters stated in the Dispute are reasonably believed to be accurate and complete and that the representative signing the certification is duly authorized to execute and deliver such certification;
10. the disputing Party's proposed resolution of the Dispute; and
11. any other information the disputing Party considers relevant.

**EXHIBIT 13**

**Completion Certificates**

**Part A - Certificate for Substantial Completion**

**Part B - Certificate for Final Completion**

**PART A**

**CERTIFICATE FOR SUBSTANTIAL COMPLETION**

This certificate is given in accordance with the Design-Build Agreement for the BBJ Queens Site Parking Garage Early Works Project, between the DDC and the Design-Builder, dated [●] (the “**DB Agreement**”).

Capitalized terms used and undefined in this certificate have the meanings given to such terms in the DB Agreement.

**CONFIRMATIONS AND CERTIFICATIONS**

**1. This Section to be completed by the Design-Builder**

In accordance with Section 16.1(b) of the DB Agreement, I confirm that all of the Work (other than Punch List items) has been completed in accordance with the requirements of the Contract Documents (including all applicable Submittals and Release for Construction Documents).

**SIGNED for the Design-Builder**

Name:

Company:

Date:

Signed:

**2. This Section to be completed by the Engineer of Record and the Architect of Record**

In accordance with Section 16.1(c) of the DB Agreement, I certify that:

- all Design Work has been prepared in accordance with the Contract Documents and all design review comments have been resolved;
- I have identified all of the special inspections and tests required for compliance with the applicable codes and certify that the special inspections and approved agencies engaged to supervise the Work specified above are acceptable;
- I have reviewed the Design-Builder's documentation and all inspection reports, and as far as I deemed it necessary, conducted periodic inspections and have found no discrepancy between the approved construction documentation and the Work as designed;
- based upon the statements by the Design-Builder and the Quality Assurance Manager as set forth herein and our review of inspection reports, all the Work has been witnessed and inspected by all responsible parties, including my office, in accordance with the Contract Documents;
- based on these inspections, our periodic inspections, and our review of inspection reports, all special inspection and test reports have been completed and accepted by my office and, to the best of my knowledge, information and belief, all Work (other than non-life safety Punch List items) has been completed in compliance with Applicable Law, as well as the requirements of the Contract Documents (including all applicable Submittals and Release for Construction Documents); and
- all applicable fire protection systems and devices have been properly installed and tested, and their associated alarms have been successfully transmitted to the approved central monitoring station.

**SIGNED AND SEALED by the Engineer of Record**

Name:  
Company:  
Date:  
Signed and Sealed:

**SIGNED AND SEALED by the Architect of Record**

Name:  
Company:  
Date:  
Signed and Sealed:

**3. This Section to be completed by the Quality Assurance Manager**

In accordance with Section 16.1 of the DB Agreement, I confirm that all Quality Assurance and Quality Control, testing and inspection procedures have been carried out in accordance with the Contract Documents.

**SIGNED by the Quality Assurance Manager**

Name:

Company:

Date:

Signed:

**COUNTERSIGNED BY THE DDC CERTIFYING SUBSTANTIAL COMPLETION HAS OCCURRED AS OF THE FOLLOWING DATE: \_\_\_\_\_**

**THE CITY OF NEW YORK,**  
By and through **THE DDC,**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PART B**

**CERTIFICATE FOR FINAL COMPLETION**

This certificate is given in accordance with the Design-Build Agreement for the BBJ Queens Site Parking Garage Early Works Project, between the DDC and the Design-Builder, dated [●] (the “**DB Agreement**”).

Capitalized terms used and undefined in this certificate have the meanings given to such terms in the DB Agreement.

**CONFIRMATIONS AND CERTIFICATIONS**

**1. This Section to be completed by the Design-Builder**

In accordance with Section 17.1(c) of the DB Agreement, I confirm that all of the Work (including all Punch List Items) has been completed in accordance with the requirements of the Contract Documents (including all applicable Submittals, Final Design Documents, and Construction Documents).

**SIGNED for the Design-Builder**

Name:

Company:

Date:

Signed:

**2. This Section to be completed by the Engineer of Record and the Architect of Record**

In accordance with Section 17.1 of the DB Agreement, I certify that:

- all Design Work has been prepared in accordance with the Contract Documents and all design review comments have been resolved;
- I have identified all of the special inspections and tests required for compliance with the applicable codes and certify that the special inspections and approved agencies engaged to supervise the Work specified above are acceptable;
- I have reviewed the Design-Builder's documentation and all inspection reports, and as far as deemed it necessary conducted periodic inspections and have found no discrepancy between the approved construction documentation and the Work as designed;
- based upon the statements by Design-Builder and the Quality Assurance Manager as set forth herein and our review of inspection reports, all the Work has been witnessed and inspected by all responsible parties, including my office, in accordance with the Contract Documents;
- based on these inspections, our periodic inspections, and our review of inspection reports, all special inspection and test reports have been completed and accepted by my office and, to the best of my knowledge, information and belief, all Work has been completed in compliance with the Applicable Law, as well as the requirements of the Contract Documents (including all applicable Submittals and Release for Construction Documents); and
- all applicable fire protection systems and devices have been properly installed and tested, and their associated alarms have been successfully transmitted to the approved central monitoring station.

**SIGNED AND SEALED by the Engineer of Record**

Name:  
Company:  
Date:  
Signed and Sealed:

**SIGNED AND SEALED by the Architect of Record**

Name:  
Company:  
Date:  
Signed and Sealed:

**3. This Section to be completed by the Quality Assurance Manager**

In accordance with Section 17.1 of the DB Agreement, I confirm that all Quality Assurance and Quality Control, testing and inspection procedures have been carried out in accordance with the Contract Documents.

**SIGNED by the Quality Assurance Manager**

Name:

Company:

Date:

Signed:

**COUNTERSIGNED BY THE DDC CERTIFYING FINAL COMPLETION HAS OCCURRED AS OF THE FOLLOWING DATE: \_\_\_\_\_**

**THE CITY OF NEW YORK,**  
By and through **THE DDC,**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT 14

### M/WBE Requirements

#### 1. M/WBE UTILIZATION

##### 1.1 Statutory Requirements

Pursuant to the Rikers Island Jail Complex Replacement Act, the Design-Builder must comply with the objectives and goals of the City Administrative Code Section 6-129 (the “**NYC M/WBE Law**”). The requirements, process and procedures under the NYC M/WBE Law will not apply to this Agreement or the Design-Builder unless expressly provided in this Exhibit 14 (*M/WBE Requirements*). The Design-Builder will satisfy the Rikers Island Jail Complex Replacement Act and comply with the objectives and goals of the NYC M/WBE Law by satisfying and complying with the requirements set out in this Exhibit 14 (*M/WBE Requirements*).

##### 1.2 Objectives and Goals

A Minority or Women Owned Business Enterprise (“**M/WBE**”) is a for-profit, small business concern certified by either or both of the Empire State Development’s, Division of Minority and Women’s Business Development (“**DMWBD**”) in accordance with Article 15-A of the New York State Executive Law or by the New York City Department of Small Business Services (“**NYCSBS**”) in accordance with Section 1304 of the City Charter. DDC and the Design-Builder will work to:

- (a) ensure nondiscrimination in award and administration of this Agreement;
- (b) ensure that only firms that fully meet M/WBE eligibility standards are permitted to participate in DDC’s M/WBE programs;
- (c) help remove barriers to the participation of M/WBEs in the performance of the Agreement;
- (d) create a level playing field on which M/WBEs can fairly compete for DDC’s agreements.

The Parties must, collectively, and as a team, take all necessary and reasonable steps in accordance with the Applicable Laws described in this Exhibit 14 (*M/WBE Requirements*) to promote the objectives outlined above. The Design-Builder must not use the requirements of these specifications to discriminate against any qualified company or group of companies. These requirements must be included in all of the Design-Builder’s Subcontracts.

##### 1.3 M/WBE Collaboration & M/WBE Coordinators

###### (a) Collaboration / Partnering Approach

- (i) In accordance with Article 2 (*Project Management and Coordination*) of the Standard Project Requirements, the Parties will have a collaborative process for delivering the Project and satisfying the M/WBE requirements in this Exhibit. The M/WBE collaboration process will seek to foster an environment where communication, coordination, and cooperation are the norm, and develop a mutual understanding and culture among the Parties such that they will work collectively, as a team, to exhaust all Good Faith Efforts to meet the M/WBE Goals for this Project. Part of this process will be participation in M/WBE collaboration workshops every 8-16 weeks throughout the Project’s implementation (“**M/WBE Workshops**”)

- (ii) This section does not supersede or modify any other provisions of the Agreement, nor does it reduce or limit the respective rights and duties of the DDC and Design-Builder under the Agreement, nor supersede contractual procedures for the resolution of claims and disputes described in the Agreement.

(b) **M/WBE Coordinators**

Each Party will appoint a qualified, full-time coordinator for the implementation of the Design-Builder's M/WBE Achievement and Utilization Plan (each an "**M/WBE Coordinator**" and collectively, the "**M/WBE Coordinators**"). The M/WBE Coordinators will jointly lead any M/WBE Workshops and will be in communication at least daily on the Project's overall attainment of the M/WBE Goals. The M/WBE Coordinators must routinely review the M/WBE Achievement and Utilization Plan for improvements and adjustments and will work as a team to perform the Good Faith Efforts required in this Exhibit 14 (*M/WBE Requirements*). While the Design-Builder retains legal and contractual responsibility for achieving the M/WBE Goals, the M/WBE Coordinators should view their relationship as a partnership driven by constant, open and transparent communication where both are taking significant effort to ensure the M/WBE Goals are achieved.

1.4 **M/WBE Goals and Monitoring**

(a) **M/WBE Goals**

This is a City-funded Agreement with the "**M/WBE Goals**" of 30% of the Lump Sum Amount designated for the performance of Construction Work and 30% of the portion of the Lump Sum Amount designated in the Schedule of Values for Design Work. The Design-Builder will meet the M/WBE Goals in its performance of the Work. The Parties will, on a weekly basis document the Parties' collective Good Faith Efforts being taken to achieve the M/WBE Goals. DDC will continually monitor efforts by the Design-Builder to provide opportunities for M/WBE participation, undertake solicitations for M/WBE participation, document commitments for M/WBE utilization and verify attainments accomplished by M/WBE firms. DDC will review the Design-Builder's documentation of Good Faith Efforts to ensure that maximum opportunities are acted upon towards meeting the M/WBE Goals.

(b) **M/WBE Achievement and Utilization Plan**

- (i) The Design-Builder must submit to the DDC, within thirty days of the NTP 1 Date, a more detailed and updated version of the M/WBE Achievement and Utilization Plan included with its Proposal, which in each case will reflect the M/WBE Goals above. The detailed M/WBE Achievement and Utilization Plan will be finalized and agreed by the Parties as part of the M/WBE Workshops within the first one-hundred and eighty days following the NTP 1 Date. The M/WBE Achievement and Utilization Plan will thereafter be updated annually in a manner as agreed between the Parties and will be reviewed by the M/WBE Coordinators (as described in Section 1.3(b) below). Any modifications to the M/WBE Achievement and Utilization Plan should reflect adjustments necessary to represent actual results from the prior twelve months of M/WBE performance. Except as provided in Section 1.4(b)(ii) below, in no case will the M/WBE Achievement and Utilization Plan not comply with the M/WBE Goal.
- (ii) At any time following the NTP 1 Date, the Design-Builder, after meaningful coordination and collaboration with the DDC's M/WBE Coordinator, may seek such "modification" in accordance with the procedures for a post-agreement

“modification” described under the NYC M/WBE Law. The City may grant such request if it determines that the Design-Builder has established, with appropriate documentary and other evidence, that the Design-Builder made all Good Faith Efforts to meet the M/WBE Goals in accordance with Section 6 (*Good Faith Efforts*). To the extent any such “modification” is granted by the City in accordance with the NYC M/WBE Law, the Parties will still continue to exhaust all Good Faith Efforts to achieve the unmodified M/WBE Goals; however, for purposes of satisfying the M/WBE Goals the “modified” M/WBE Goals will be what is used as the basis for exercising any remedies or defaults under this Agreement.

2. **ELIGIBILITY**

M/WBEs that are certified by the DMWBD or by NYCSBS are the only firms eligible to be used for goal attainment on this Agreement.

M/WBE certification is simply an acknowledgment of the firm’s status as a M/WBE and is not an endorsement of the quality or performance of the business.

3. **PAYROLL RECORDS** No less than once per month, the Design-Builder must furnish DDC with its payroll records and statement of compliance with the M/WBE Goals in connection with the wages paid each of its employees and each Subcontractor employee (including apprentices, trainees, watch persons, and guards) engaged on the Work during the preceding weekly payroll period. Certified payrolls must contain work class, daily and weekly number of hours worked, wage rate, deductions made and actual wages paid.

4. **COUNTING M/WBE PARTICIPATION** The value of the Work performed by an M/WBE, including that of a M/WBE Design-Builder, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a Commercially Useful Function as described further in Section 5(b) (*Commercially Useful Function*) below. A M/WBE Design-Builder (or M/WBE joint venture) must still provide opportunities for participation by other M/WBEs. Work performed by M/WBEs working for the Design-Builder will be counted as set forth below. If DDC determines that some or all of the M/WBE’s work does not constitute a Commercially Useful Function, only the portion of the work considered to be a Commercially Useful Function will be credited toward the goal.

(a) **Subcontractors** 100% of the value of the Work to be performed by a M/WBE Subcontractor will be counted toward the M/WBE Goal. The value of such Work includes the cost of materials and supplies purchased by the M/WBE, except the cost of supplies or equipment leased from the Design-Builder or its affiliates will not be counted. Any tier subcontracting will be permitted. In instances where a first-tier Subcontractor is not a M/WBE, but any other tier Subcontractor is a M/WBE, the amount of the other tier Subcontract to the M/WBE will be counted toward the M/WBE Goal.

(b) **Manufacturers/Fabricators** 100% of the expenditure to a M/WBE manufacturer or fabricator will be counted towards the M/WBE Goal. Manufacturers or fabricators may provide materials to any Design-Builder Party.

(c) **Material Suppliers** 60% of the expenditure to a M/WBE material supplier will be counted toward the M/WBE Goals. Packagers, brokers, manufacturer’s representatives, or other persons who arrange or expedite transactions are not material suppliers. Material suppliers may provide materials to any Design-Builder Party.

- (d) **Brokers/Manufacturer's Representatives** 100% of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by a M/WBE broker/manufacturer's representative will be counted toward the M/WBE Goal, provided they are determined by DDC to be reasonable and not excessive as compared with fees customarily allowed for similar services. Brokers may supply materials to any Design-Builder Party. The monetary value for fees, or the markup percentage, will be credited when a M/WBE broker is used (industry standards typically reflect a brokerage fee of 5-7% from the total contract amount). The cost of materials and supplies purchased by a M/WBE Subcontractor will count toward the M/WBE Goals, but such costs will not be double-counted if purchased from M/WBE material suppliers.
- (e) **Services** 100% of commissions charged by a M/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of this Agreement will be counted toward the M/WBE Goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- (f) **Trucking Operations** The M/WBE trucking firm of record is the firm that is listed on the M/WBE Achievement and Utilization Plan. The M/WBE must own and operate at least one registered, insured, and fully operational truck for use related to this Agreement and must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Subcontract, and there cannot be a contrived arrangement for the purpose of meeting the M/WBE Goal, for example the M/WBE trucking firm of record should control the day-to-day M/WBE trucking operations relating to this Agreement and will be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Design-Builder; and (4) scheduling and dispatching trucks.
  - (i) **M/WBE Owned/Leased Trucks.** 100% of the value of the trucking operations the M/WBE provides on the Agreement using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the M/WBE using drivers it employs, will be counted toward the M/WBE Goal(s). A lease must indicate that the M/WBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the M/WBE, so long as the lease gives the M/WBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the M/WBE.
  - (ii) **Other M/WBE Trucks.** The M/WBE may obtain trucks from another M/WBE including a M/WBE owner/operator. 100% of the value of the trucking operations that the other M/WBE provides will also be counted toward the M/WBE Goal.
  - (iii) **Non-M/WBE Trucks.** The M/WBE may obtain trucks from a non-M/WBE including an owner-operator. Only the value of the fee or commission that the M/WBE receives as a result of the arrangement with the non-M/WBE will be counted toward the M/WBE Goal.
- (g) **Joint Venture** Joint ventures between M/WBEs and non-M/WBEs will be counted toward the M/WBE Goals in proportion to the total dollar value of the distinct and clearly defined portion of the Work that the M/WBE joint venture member performs with its own forces. To obtain M/WBE credit for any such joint venture arrangement, the Design-Builder must

disclose its joint venture agreement to DDC for purposes of verifying the M/WBE participation by the M/WBE joint venture member.

- (h) **Equipment Rental.** 100% of the expenditure for a M/WBE for equipment rental will be counted toward the M/WBE Goal. The Design-Builder must have a written rental agreement with the firm that rents the equipment.

5. **CONDITIONS OF PARTICIPATION** M/WBE participation will be counted toward meeting the M/WBE Goal, subject to all of the following conditions:

(a) **Commercially Useful Function.**

(i) **Generally**

A M/WBE performs a commercially useful function when it is responsible for execution of the work of its applicable contract and is carrying out its responsibilities by actually performing, managing, or supervising the work involved. To perform a commercially useful function, a M/WBE may, where applicable and in accordance with any DDC specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A M/WBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or Project through which funds are passed in order to obtain the appearance of participation. Factors to be used in assessing whether a M/WBE is performing a commercially useful function include:

- (A) the amount of Work subcontracted;
- (B) Industry practices;
- (C) whether the amount the M/WBE is to be paid is commensurate with the Work it performs;
- (D) the credit claimed towards the M/WBE Goals for the performance of the Work by the M/WBE; and
- (E) any other relevant factors (collectively, a **“Commercially Useful Function”**).

(ii) **Crediting Commercially Useful Function**

- (A) Regardless of whether an arrangement between the Design-Builder and the M/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the M/WBE or in any other way does not meet the Commercially Useful Function requirement, that firm will not be included in determining whether the M/WBE Goals is met and must not be included in M/WBE reports. If this occurs with respect to a firm identified as a M/WBE, the Design-Builder will receive no credit toward the M/WBE Goals and may be required to backfill the participation.
- (B) If at any time the Parties disagree as to whether a M/WBE is providing a Commercially Useful Function, an M/WBE or the Design-Builder may

present evidence to rebut a determination by DDC that the M/WBE is not performing a Commercially Useful Function. Commercially Useful Function determinations by DDC are subject to review under the Dispute Resolution Clause.

- (b) **Work Force.** The M/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Design-Builder, other Subcontractors on this Agreement, or their affiliates. This does not preclude the employment by the M/WBE of an individual that has been previously employed by another firm involved in this Agreement, provided that the individual was independently recruited by the M/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the M/WBE will not be allowed.
- (c) **Supervision.** All Work performed by the M/WBE must be controlled and supervised by the M/WBE without unnecessary duplication of supervisory personnel from the Design-Builder, other Subcontractors on this Agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the M/WBE and other supervisors necessary to coordinate the Work.
- (d) **Equipment.** M/WBE Subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. The M/WBE must obtain approval of DDC prior to renting equipment from the Design-Builder or its affiliates and must provide documentation to DDC demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation may include, copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

## 6. **Good Faith Efforts.**

### 6.1 **Defined Term**

“**Good Faith Efforts**” will be determined, and defined, as described further in Section 6.2 (*Good Faith Efforts Requirements*) below. Efforts to obtain M/WBE participation that are merely pro forma are not good faith efforts, nor are efforts that, even if they are sincerely motivated, given all relevant circumstances, they could not reasonably be expected to produce a level of M/WBE participation sufficient to meet the goal.

### 6.2 **Good Faith Efforts Requirements**

#### (a) **General Requirement**

The Design-Builder and the DDC must exercise Good Faith Efforts to ensure that the Work is performed in a manner that meets the M/WBE Goals for the Project. Where an M/WBE’s pricing is reasonable, the potential that additional costs are involved in finding and using M/WBEs is not a sufficient reason for a Design-Builder’s failure to meet the M/WBE Goals. The ability or desire of the Design-Builder to perform the Work with its own organization does not relieve the Design-Builder of the responsibility to make Good Faith Efforts. The Design-Builder is not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.

#### (b) **Good Faith Efforts Explained**

In order to exercise Good Faith Efforts, in addition to the requirements in Sections 1.3 (*M/WBE Collaboration & M/WBE Coordinators*) and 1.4 (*M/WBE Goals and Monitoring*), the following, which is not intended to be a mandatory, exhaustive or exclusive list, provides a basis for determining whether Good Faith Efforts have been exercised as required under this Exhibit 15 (*M/WBE Requirements*) whether:

- (i) there have been advertised opportunities to participate in the Agreement, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of M/WBE organizations;
- (ii) notices of specific opportunities to participate in the Agreement, in a timely manner, have been provided to M/WBEs. The Design-Builder should solicit this interest within sufficient time to allow the M/WBEs to respond to the solicitation. The Parties should verify that M/WBEs received the solicitation by following up on the initial solicitation with at least one additional solicitation via a different media. The Parties must keep records of efforts to solicit and negotiate with M/WBEs as evidence of good-faith efforts, using a solicitation log as a continuing record;
- (iii) written notices have been sent, by certified mail, fax, e-mail or other electronic format, in a timely manner, to advise M/WBEs that their interest in the Agreement was solicited;
- (iv) selecting or substituting portions of the Work to be performed by M/WBEs in order to increase the likelihood that the M/WBE Goal(s) will be achieved. This includes, where appropriate, either breaking down operations or combining like or related operations into logistically and economically feasible units to facilitate M/WBE participation, even when the Design-Builder might prefer to perform these work items with its own forces;
- (v) the Design-Builder held meetings with M/WBEs prior to and following the NTP 1 Date, for the purpose of explaining in detail the scope and requirements of the Work;
- (vi) the Design-Builder made efforts to negotiate with M/WBEs as relevant to perform as specific Subcontractors, or act as suppliers, manufacturers or service providers;
- (vii) the Design-Builder made timely written requests for assistance to the DDC's M/WBE Coordinators for the Project;
- (viii) whether any recommendations made by the DDC's M/WBE Coordinator were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of M/WBEs;
- (ix) the Parties have periodically reviewed items that are available for M/WBE participation, typically before the beginning of a new construction season and when significant new items of work are added to the Agreement, and conducted additional M/WBE solicitations and outreach;
- (x) the Design-Builder made a portion of the Work available to M/WBEs and selected those portions of the Work or material needs consistent with the available M/WBEs and material suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans

and specifications for the Work selected for Subcontracting; and evidence as to why additional agreements could not be reached for M/WBEs to perform the Work;

- (xi) any M/WBEs were deemed unqualified without sound reasons based on a thorough investigation of their capabilities;
- (xii) the Design-Builder made efforts to assist interested M/WBEs in obtaining bonding, lines of credit or insurance; and
- (xiii) the Design-Builder made efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance.

(c) **Failure to Exercise Good Faith Efforts**

If at any time DDC or the City determines that the Design-Builder has failed to undertake Good Faith Efforts to meet the M/WBE Goal, DDC will, before exercising any remedies available for such failure, provide the Design-Builder an opportunity to implement a Remedial Plan in accordance with Section 35.3 (*Remedial Plan for Design-Builder Default or Early Warning Trigger*) of the Agreement solely for the purpose of rectifying its failure to perform Good Faith Efforts under this Exhibit 14 (*M/WBE Requirements*). Any failure to deliver a Remedial Plan or perform in accordance with such Remedial Plan will be governed by Section 35.3(b) (*Remedial Plan for Design-Builder Default or Early Warning Trigger*) of the Agreement.

7. **Changes to M/WBE Achievement and Utilization Plan.**

(a) **DDC Approval**

In addition to any periodic reviews of the M/WBE Achievement and Utilization Plan described in Section 1.3(b) above, the Design-Builder may modify its utilization of a specific M/WBE identified in the M/WBE Achievement and Utilization Plan if it obtains DDC's prior written approval for such changes in either M/WBE or an M/WBE's Work. If the reduction of a M/WBE's work or the removal of the M/WBE, including for reasons of Commercially Useful Function violations, causes the M/WBE utilization to fall below the M/WBE Goal, the Design-Builder must make Good Faith Efforts to find another M/WBE to substitute for the original M/WBE to perform at least the same amount of Work as the M/WBE that was terminated, to the extent needed to meet the M/WBE Goal. A M/WBE may be substituted if the Work committed to the M/WBE is deleted or reduced by the Design-Builder and enough Work remains to substitute an equal commitment amount to the affected M/WBE. Notwithstanding the foregoing, the following modifications will not be subject to DDC's prior written approval:

- (i) increasing the dollar value of work or adding new types(s) of work within the same core (3 digit) M/WBE work code (e.g., 606 - Guide Railing) to a M/WBE;
- (ii) substituting similar dollar values of work within a currently approved core (3 digit) M/WBE work code (e.g., 606 – Guide Railing).]
- (iii) changes in utilization due to differences between estimated quantities and actual work performed.

(b) **Good Cause M/WBE Termination**

DDC may consent to termination of an M/WBE firm if the Design-Builder has good cause to terminate the M/WBE firm. Good cause includes, at a minimum, one the following circumstances:

- (i) the listed M/WBE fails or refuses to execute a written contract;
- (ii) the listed M/WBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards; provided, however, that good cause does not exist if the failure or refusal of the M/WBE Subcontractor to perform its work on the Subcontract results from the bad faith or discriminatory action of the Design-Builder;
- (iii) the listed M/WBE fails or refuses to meet the Design-Builder's reasonable, nondiscriminatory bond requirements;
- (iv) the listed M/WBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (v) the listed M/WBE is ineligible to work on public works projects because of a suspension or debarment by a Governmental Entity;
- (vi) the DDC has determined that the listed M/WBE is not a responsible firm;
- (vii) the listed M/WBE voluntarily withdraws from the Project and provides to DDC written notice of its withdrawal;
- (viii) the listed M/WBE is ineligible to receive M/WBE credit for the type of Work required;
- (ix) the M/WBE owner dies or becomes disabled with the result that the listed M/WBE is unable to complete its work; or
- (x) any other documented good cause that the Design-Builder determines compels the termination of the M/WBE.

(c) **Notice Requirement**

Before submitting its request to terminate and/or substitute a M/WBE to DDC, the Design-Builder must give notice in writing to the M/WBE Subcontractor, with a copy to DDC, of its intent to request to terminate and/or substitute, and the reason for the request.

The Design-Builder must give the M/WBE five days to respond to the notice and advise DDC and the Design-Builder of the reasons, if any, why the M/WBE objects to the proposed termination of its Subcontract and why DDC should not approve the Design-Builder's action. If required in a particular case as a matter of public necessity (e.g., safety), DDC may approve a response period shorter than five days.

8. **M/WBE Utilization Reporting.**

(a) **Civil Rights Reporting Software**

The Design-Builder must use B2Gnow software or other civil rights software approved by DDC to report M/WBE data to DDC under this Agreement.

- (i) As soon as practicable, but not later than the date of the first M/WBE payment, the Design-Builder must enter all current utilization data into B2Gnow software or other DDC approved civil rights reporting software from the Form M-1, Table 1 as submittal as part of the Proposal. Thereafter, data must be entered each month, not later than the 15th of the following month. Data must be current through the end of the last full payroll week for that month, or as otherwise approved by DDC to coordinate with payment submittals.
- (ii) The Design-Builder must report payments made to all firms working under this Agreement for the Design-Builder, including all M/WBEs, in order to measure goal attainment and to gauge the effect of the M/WBE Goals on the industry. The Design-Builder must submit payment data for all firms and for all certified M/WBEs that are due a payment or have received a payment within the last month. All firms and M/WBEs must acknowledge payment not later than seven calendar days after receipt. Attainments will be measured based on payments made to M/WBEs. Attainments based on work completed by M/WBEs that are no longer certified will not be counted after the M/WBE is no longer certified.
- (iii) For each M/WBE, the Design-Builder must explain, in writing, the scope of Work to be performed by the M/WBE and expressly indicate any item or component of the scope which is not completely performed by the M/WBE. The value of each work assignment to a M/WBE must have a corresponding DDC - M/WBE work code for DDC verification of certification and payment. Each M/WBE must be identified for its type of service/material provided (examples: design, inspection, materials, trucking and construction).
- (iv) For each M/WBE trucking operation, the Design-Builder must also indicate the type of trucking operation to be performed, the number of trucks owned/leased, the number of trucks working on-site or off-site, rate per hour/ton/load/etc., duration or amount, and total dollar value of the proposed M/WBE commitment. The Design-Builder must provide copies of all lease agreements utilized by the M/WBE.

**9. Required Records.**

The Design-Builder must keep records and documents in accordance with the terms of this Agreement. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representatives of DDC and will be submitted to DDC upon request, together with other compliance information which may be required.

**10. Reporting Violations of Program Rules.**

The Design-Builder is responsible for ensuring that the M/WBE performs a Commercially Useful Function as defined in Section 5(a) (*Commercially Useful Function*). If the Design-Builder becomes aware of any violations of this Exhibit 14 (*M/WBE Requirements*), the Design-Builder is required to promptly report the violations to DDC's M/WBE Coordinator.

**11. Breach of M/WBE Requirements**

The Design-Builder acknowledges that DDC's award of this Agreement to the Design-Builder was conditioned upon the Design-Builder's acceptance of satisfying the requirements in this Exhibit 14 (*M/WBE Requirements*). If the DDC or its M/WBE Coordinator determine at any time that the Design-Builder is not complying with the requirements under this Exhibit 14 (*M/WBE Requirements*), the DDC may choose, in its discretion, to not accept any further Submittals required

for the Design-Builder to perform the Work. The Design-Builder, upon receipt of written notification of its failure to comply with this Exhibit 14 (*M/WBE Requirements*) must promptly correct such action and develop an M/WBE specific Remedial Plan in accordance with Section 35.3 (*Remedial Plan for Design-Builder Default or Early Warning Trigger*) of the Agreement. The Parties will also conduct an ad-hoc M/WBE Workshop within ten Business Days of the DDC's notice to finalize the Remedial Plan and quickly rectify any such deficiencies.

12. **City Remedies Available.**

If, notwithstanding the remedial efforts under Section 11 (Breach of M/WBE Requirements), the City determines the Design-Builder is in breach of this Exhibit 14 or any Remedial Plan or if the City determines that the Design-Builder is found to have willfully and intentionally failed to comply with the requirements in this Exhibit 14 (M/WBE Requirements) or any Remedial Plan, then the City may exercise any action or remedy described in Section (o) (Enforcement) of the NYC M/WBE Law and the Design-Builder may be subject to liquidated damages as follows:

(a) M/WBE Liquidated Damages

- (i) DDC may assess liquidated damages in the amount of ten percent (10%) of the difference between the portion of the Lump Sum Amount designated for Design Work or for Construction Work in the Schedule of Values, as applicable, required to be awarded to M/WBEs to meet the M/WBE Goals for Design Work or Construction Work, as applicable, and the dollar amount the Design-Builder actually awarded and paid, and/or credited, to M/WBEs for Design Work or Construction Work, as applicable.
- (ii) In view of the difficulty of accurately ascertaining the loss that the City will suffer by reason of the Design-Builder's breach of this Exhibit 14 or any Remedial Plan or if the Design-Builder is found to have willfully and intentionally failed to comply with the requirements of this Exhibit 14 (M/WBE Requirements) or any Remedial Plan, the foregoing is fixed and agreed as liquidated damages that the City will suffer by reason of such breach or willful and intentional failure, and not as a penalty. DDC may deduct and retain out of any monies that may become due under the Agreement in the amount of such liquidated damages.

**EXHIBIT 15**

**Form of Performance Bond and Payment Bond**

Form of Performance Bond

KNOW ALL PEOPLE BY THESE PRESENTS:

Bond No. 015210414

That we, Hunter Roberts Construction Group, LLC

55 Water Street

New York, NY 10004

hereinafter referred to as the "Principal," and, Liberty Mutual Insurance Company

175 Berkeley Street, Boston, MA 02116

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns in the penal sum of Seventy Three Million

Nine Hundred Eighty-Two Thousand Three Hundred Twenty-Seven and 00/100

( \$ 73,982,327.00 ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, The Principal is about to enter, or has entered, into a Contract in writing with the City for

Design-Build Borough-Based Jails Program - Queens Site Parking Garage

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE**, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal's default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal's default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to either (1) pay the full amount of the above penal sum in complete discharge and exoneration of this bond and of all the liabilities of the Surety relating to this bond, or (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof. The Surety (Sureties) further agrees, at its option, either to

tender the penal sum or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to commence and to complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

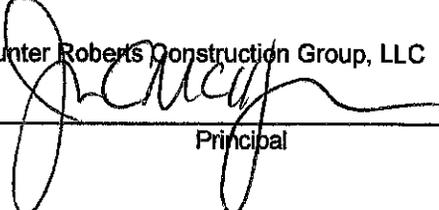
[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ 20th \_\_\_\_\_ day of \_\_\_\_\_ January \_\_\_\_\_ 2021 \_\_\_\_\_.

(Seal)

Hunter Roberts Construction Group, LLC

  
\_\_\_\_\_  
Principal (L.S.)

(Seal)

By: \_\_\_\_\_  
Liberty Mutual Insurance Company  
Surety

(Seal)

By:   
Robert B. Pitts, Attorney-in-Fact  
Surety

(Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
Surety

(Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
Surety

(Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
Surety

By: \_\_\_\_\_

Bond Premium Rate \$10.00 per thousand.

Bond Premium Cost \$850,796.00.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

**ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_,

to me known, who, being by me duly sworn did depose and say that he/she resides

at \_\_\_\_\_; that he/she is the

\_\_\_\_\_ of the corporation described in and which executed the foregoing instrument; and that he signed his name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF PRINCIPAL IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn did depose and say that he/she resides

at \_\_\_\_\_; that he/she is

\_\_\_\_\_ partner of \_\_\_\_\_, a limited/general partnership existing

under the laws of the State of \_\_\_\_\_, the partnership described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said partnership.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF PRINCIPAL IF AN INDIVIDUAL**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn did depose and say that he/she resides

at \_\_\_\_\_, and that he/she is the individual whose name is subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument, said individual executed the instrument.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

Each executed bond should be accompanied by:

- (a) Appropriate acknowledgments of the respective parties;
- (b) Appropriate duly certified copy of Power of Authority or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety;
- (c) A duly certified extract from by-laws or resolution of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued, and
- (d) A duly certified copy of latest published financial statement of assets and liabilities of Surety.

Affix Acknowledgments and justification of Sureties

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF

COUNTY OF

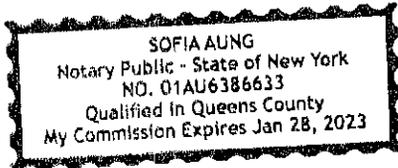
SS:

On this 27 day of January, 2021 before me personally  
appeared Mr. James C McKenna to me known, who by me being duly sworn,

did depose and say: that \_\_\_ he is an authorized agent of the limited liability company of

Hunter Roberts Construction Group, LLC  
(Name of LLC)

and that \_\_\_ he is authorized to execute the attached surety bond in the name of and for  
the limited liability company above named, and that \_\_\_ he acknowledged to me that \_\_\_ he  
signed the attached instrument pursuant to such authority.



Aung

Notary Public

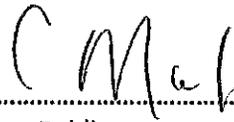
My commission expires: Jan 28, 2023

**ACKNOWLEDGMENT OF SURETY COMPANY**

STATE OF NEW JERSEY

COUNTY OF SOMERSET

On this **20th** day of **January 2021**, before me personally came **Robert B. Pitts** to me known, who, being by me duly sworn, did depose and say; that he is the Attorney-in-Fact of the **Liberty Mutual Insurance Company** the corporation described in which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the Board of Directors of said corporation; and that he signed her name thereto by the authority of the Power of Attorney of said Company, of which a Certified Copy is hereto attached, and that he signed said Instrument as an Attorney-in-Fact of said company by like authority.



.....  
Notary Public

ANN MARIE KEANE  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 19, 2025



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8200267-969357

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Jane L. Fedorczyk; Gary V. Rispoli; Joseph T. Charczenko, Jr.; Peter H. Forenza; Annmarie Keane; Joseph J. Kent; William X. Linney, III; Alfred C. Marquis, Jr.; Fred E. Nicholson; Richard A. Nocella; Tyler Oakes; Andrew O'Brien; Robert B. Pitts; Robert S. Rapp, Jr.; Elizabeth Riga; John J. Sciortino, Jr.; Gregory J. Steele

all of the city of Branchburg state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 10th day of January, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey

David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY

On this 10th day of January, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 20th day of January, 2021.



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LIBERTY MUTUAL INSURANCE COMPANY  
**FINANCIAL STATEMENT — DECEMBER 31, 2019**

<b>Assets</b>		<b>Liabilities</b>	
Cash and Bank Deposits.....	\$778,754,989	Unearned Premiums.....	\$8,007,146,482
*Bonds — U.S Government.....	2,780,808,610	Reserve for Claims and Claims Expense .....	21,532,853,787
*Other Bonds.....	12,645,608,792	Funds Held Under Reinsurance Treaties.....	507,868,920
*Stocks.....	16,385,435,431	Reserve for Dividends to Policyholders.....	1,143,826
Real Estate.....	235,608,378	Additional Statutory Reserve.....	125,722,000
Agents' Balances or Uncollected Premiums.....	6,217,983,641	Reserve for Commissions, Taxes and	
Accrued Interest and Rents.....	102,273,390	Other Liabilities .....	4,117,460,075
Other Admitted Assets.....	11,957,106,292	<b>Total .....</b>	<b>\$34,292,195,090</b>
		Special Surplus Funds.....	\$32,768,443
		Capital Stock.....	10,000,075
		Paid in Surplus.....	10,044,978,933
		Unassigned Surplus.....	6,723,636,983
		<b>Surplus to Policyholders.....</b>	<b>16,811,384,434</b>
<b>Total Admitted Assets .....</b>	<b><u>\$51,103,579,523</u></b>	<b>Total Liabilities and Surplus.....</b>	<b><u>\$51,103,579,524</u></b>



\* Bonds are stated at amortized or investment value; Stocks at Association Market Values.  
 The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2019, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 27<sup>th</sup> day of March, 2020.

*TAMikolajewski*

\_\_\_\_\_  
 Assistant Secretary

**FORM OF PAYMENT BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**

Bond No. 015210414

That we, Hunter Roberts Construction Group, LLC

55 Water Street

New York, NY 10004

hereinafter referred to as the "Principal," and, Liberty Mutual Insurance Company

175 Berkeley Street, Boston, MA 02116

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns in the penal sum of Seventy Three Million

Nine Hundred Eighty-Two Thousand Three Hundred Twenty-Seven and 00/100

(\$ 73,982,327.00 ) Dollars, lawful money of the United States for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** The Principal is about to enter, or has entered, into a Contract in writing with the City for

Design-Build Borough-Based Jails Program - Queens Site Parking Garage

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE,** the conditions of this obligation are such that if the Principal, his or its representatives or assigns and other Subcontractors to whom Work under this Contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for:

(a) Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Work under said Contract, and any amendment or extension thereof or addition thereto, whether such persons be agents, servants or employees of the Principal or of any such Subcontractors, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the Project regardless of any Contractual relationship between the Principal or such Subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly stationed at the site of the Project, and

(b) Materials, and supplies (whether incorporated in the permanent construction or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractors at or in the vicinity of the site of the Project in the prosecution of the Work under said Contract and any amendment or extension thereof or addition thereto; then this obligation shall be null and void; otherwise to remain in full force and effect.

This bond is subject to the following additional conditions, limitations and agreements:

- (a) The Principal and Surety (Sureties) agree that this bond shall be for the benefit of any materialman or laborer having a just claim, as well as the City itself.
- (b) All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other person as party plaintiff.
- (c) The Principal and Surety (Sureties) agree that neither of them will hold the City liable for any judgment for costs or otherwise, obtained against either or both of them by a laborer or materialman in a suit brought by either a laborer or materialman under this bond for moneys allegedly due for performing work or furnishing material.
- (d) The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workmen's Compensation Law.
- (e) In no event shall the Surety (Sureties), or its successors or assigns, be liable for a greater sum than the penalty of this bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two (2) years after the complete performance of said Contract and final settlement thereof.

The Principal, for himself and his successors and assigns, and the Surety (Sureties), for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the City to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon by any person, firm or corporation, including Subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered, or furnished as aforesaid upon the ground that there is no law authorizing the City to require the foregoing provisions to be placed in this bond.

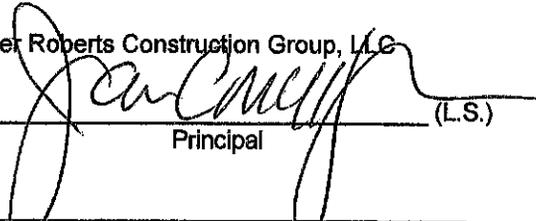
And the Surety (Sureties) for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this

\_\_\_\_\_ 20th \_\_\_\_\_ day of \_\_\_\_\_ January \_\_\_\_\_ 20 21 \_\_\_\_\_.

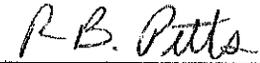
(Seal)

Hunter Roberts Construction Group, LLC  
  
\_\_\_\_\_  
Principal (L.S.)

(Seal)

By: \_\_\_\_\_  
Liberty Mutual Insurance Company  
Surety

(Seal)

By:   
Robert B. Pitts, Attorney-in-Fact  
Surety

(Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
Surety

(Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
Surety

(Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
\_\_\_\_\_

Bond Premium Rate \$10.00 per thousand

Bond Premium Cost \$850,796.00

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

**ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_,

to me known, who, being by me duly sworn did depose and say that he/she resides  
at \_\_\_\_\_

\_\_\_\_\_ ; that he/she is the \_\_\_\_\_  
of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; and that he signed his name  
to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act  
thereof.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF PRINCIPAL IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_,

to me known, who, being by me duly sworn did depose and say that he/she resides  
at \_\_\_\_\_

\_\_\_\_\_ ; that he/she is \_\_\_\_\_ partner of  
\_\_\_\_\_, a limited/general partnership existing under the laws of the State of  
\_\_\_\_\_, the partnership described in and which executed the foregoing instrument; and  
that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said  
partnership.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

**ACKNOWLEDGMENT OF PRINCIPAL IF AN INDIVIDUAL**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn did depose and say that he/she resides  
at \_\_\_\_\_

\_\_\_\_\_ and that he/she is the individual whose name is  
subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument,  
said individual executed the instrument.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds.

Each executed bond should be accompanied by:

- (e) Appropriate acknowledgments of the respective parties;
- (f) Appropriate duly certified copy of Power of Authority or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety;
- (g) A duly certified extract from by-laws or resolution of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued, and
- (h) A duly certified copy of latest published financial statement of assets and liabilities of Surety.

Affix Acknowledgments and justification of Sureties

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF

COUNTY OF

SS:

On this 27 day of January, 2021 before me personally  
appeared Mr. James C McKenna to me known, who by me being duly sworn,  
did depose and say: that \_\_\_ he is an authorized agent of the limited liability company of  
Hunter Roberts Construction Group, LLC  
(Name of LLC)

and that \_\_\_ he is authorized to execute the attached surety bond in the name of and for  
the limited liability company above named, and that \_\_\_ he acknowledged to me that \_\_\_ he  
signed the attached instrument pursuant to such authority.



*Aung*

Notary Public

My commission expires: Jan 28, 2023

**ACKNOWLEDGMENT OF SURETY COMPANY**

STATE OF NEW JERSEY

COUNTY OF SOMERSET

On this **20th** day of **January 2021**, before me personally came **Robert B. Pitts** to me known, who, being by me duly sworn, did depose and say; that he is the Attorney-in-Fact of the **Liberty Mutual Insurance Company** the corporation described in which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the Board of Directors of said corporation; and that he signed her name thereto by the authority of the Power of Attorney of said Company, of which a Certified Copy is hereto attached, and that he signed said Instrument as an Attorney-in-Fact of said company by like authority.



Notary Public

ANN MARIE KEANE  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 19, 2025



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8200287-969357

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, the Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Jane L. Fedorczyk; Gary V. Rispoli; Joseph T. Charczenko, Jr.; Peter H. Forenza; Annmarie Keane; Joseph J. Kent; William X. Linney, III; Alfred C. Marquis, Jr.; Fred E. Nicholson; Richard A. Nocella; Tyler Oakes; Andrew O'Brien; Robert B. Pitts; Robert S. Rapp, Jr.; Elizabeth Riga; John J. Sciorino, Jr.; Gregory J. Steele

all of the city of Branchburg state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 10th day of January, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 10th day of January, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 20th day of January, 2021.



By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LIBERTY MUTUAL INSURANCE COMPANY  
FINANCIAL STATEMENT — DECEMBER 31, 2019

<b>Assets</b>		<b>Liabilities</b>	
Cash and Bank Deposits.....	\$778,754,989	Unearned Premiums.....	\$8,007,146,482
*Bonds — U.S Government.....	2,780,808,610	Reserve for Claims and Claims Expense.....	21,532,853,787
*Other Bonds.....	12,645,608,792	Funds Held Under Reinsurance Treaties.....	507,868,920
*Stocks.....	16,385,435,431	Reserve for Dividends to Policyholders.....	1,143,826
Real Estate.....	235,608,378	Additional Statutory Reserve.....	125,722,000
Agents' Balances or Uncollected Premiums.....	6,217,983,641	Reserve for Commissions, Taxes and Other Liabilities.....	4,117,460,075
Accrued Interest and Rents.....	102,273,390	<b>Total.....</b>	<b>\$34,292,195,090</b>
Other Admitted Assets.....	11,957,106,292	Special Surplus Funds.....	\$32,768,443
		Capital Stock.....	10,000,075
		Paid in Surplus.....	10,044,978,933
		Unassigned Surplus.....	6,723,636,983
<b>Total Admitted Assets.....</b>	<b><u>\$51,103,579,523</u></b>	<b>Surplus to Policyholders.....</b>	<b>16,811,384,434</b>
		<b>Total Liabilities and Surplus.....</b>	<b><u>\$51,103,579,524</u></b>



\* Bonds are stated at amortized or investment value; Stocks at Association Market Values.  
The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2019, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 27<sup>th</sup> day of March, 2020.

*T. Mikolajewski*

\_\_\_\_\_  
Assistant Secretary

**EXHIBIT 16**

**Standard Legal and Public Policy Requirements**

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1. **LABOR PROVISIONS**

1.1 **Employees**

(a) **Prohibitions**

The Design-Builder and its Subcontractors must not employ on the Work:

- (i) Any labor, materials or means whose employment, or utilization during the course of this Agreement, may tend to or in any way cause or result in strikes, Work stoppages, delays, suspension of Work or similar troubles by workers employed by the Design-Builder or its Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Agreement, or by other DDC contractors or their subcontractors pursuant to other contracts, on any other building or premises owned or operated by the DDC, its Agencies, departments, boards or authorities. Any violation by the Design-Builder of this requirement may, upon certification of the DDC, be considered as proper and sufficient cause for declaring the Design-Builder to be in default, and for the DDC to take action against it as set forth in Article 35 (*Design-Builder Default*) of this Agreement, or such other article of this Agreement as the DDC may deem proper; or
- (ii) In accordance with Section 220.3-e of the Labor Law of the State of New York (hereinafter "**Labor Law**"), the Design-Builder and its Subcontractors must not employ on the Work any apprentice, unless he/she/they is a registered individual, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journey-level workers in any craft classification must not be greater than the ratio permitted to the Design-Builder as to its work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, must be paid the wage rate determined by the City Comptroller of the City for the classification of Work actually performed. The Design-Builder or Subcontractor must be required to furnish written evidence of the registration of its program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the Work.

(b) **Health and Safety Certification**

All laborers, workers, and mechanics employed in the performance of this Agreement on the public work site, either by the Design-Builder, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Agreement, must be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten hours in duration.

1.2 **Whistleblower Protection**

In accordance with Local Law Nos. 30-2012 and 33-2012, codified at Sections 6-132 and 12-113 of the City Administrative Code, respectively,

(a) **Retaliation**

The Design-Builder must not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (a) the Commissioner of the Department of Investigation, (b) a member of the New York City Council, the Public Advocate, or the City Comptroller, or (c) the CCPO, DDC, or the DDC Commissioner.

(b) **Claims**

If any of the Design-Builder's officers or employees believes that they have been the subject of an adverse personnel action in violation of Section 1.02A, they will be entitled to bring a cause of action against the Design-Builder to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (a) an injunction to restrain continued retaliation, (b) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (c) reinstatement of full fringe benefits and seniority rights, (d) payment of two times back pay, plus interest, and/or (e) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

(c) **Notice**

The Design-Builder must post a notice provided by the City in a prominent and accessible place on any site where work pursuant to this Agreement is performed that contains information about:

- (i) how its employees can report to the Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with this Agreement; and
- (ii) the rights and remedies afforded to its employees under City Administrative Code Sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with this Agreement.

(d) **Terminology**

For the purposes of this Section, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

(e) **Application**

This Section 1.02 is applicable to all of the Design-Builder's Subcontractors having subcontracts with a value in excess of \$100,000; accordingly, the Design-Builder must include this rider in all subcontracts with a value a value in excess of \$100,000.

### 1.3 HireNYC

The Design-Builder must comply with the requirements of this Section for all non-trades jobs (e.g., for an administrative position arising out of Work and located in New York City). The Design-Builder must reasonably cooperate with SBS and the City on specific outreach events, including “Hire-on-the-Spot” events, for the hiring of trades workers in connection with the Work.

(a) **Enrollment**

The Design-Builder must enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within thirty days after the registration of this Agreement pursuant to Section 328 of the New York City Charter. The Design-Builder must provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this Agreement and located in New York City, and, if so, the approximate start date of the first hire.

(b) **HireNYC Job Posting Requirements**

- (i) Once enrolled in HireNYC, the Design-Builder agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this Agreement and located in New York City, if any, which will be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from this Agreement and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Design-Builder’s representative charged with overseeing hiring. The Design-Builder must update the HireNYC portal with any hiring needs arising from this Agreement and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.
- (ii) After enrollment through HireNYC and submission of relevant information, SBS will work with the Design-Builder to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Design-Builder for interviews. The Design-Builder must interview referred applicants whom it believes are qualified.
- (iii) After completing an interview of a candidate referred by HireNYC, the Design-Builder must provide feedback via the portal within twenty Business Days to indicate which candidates were interviewed and hired, if any. In addition, the Design-Builder must provide the start date of new hires, and additional information reasonably related to such hires, within twenty Business Days after the start date. In the event the Design-Builder does not have any job openings covered by this Rider in any given year, the Design-Builder will be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year will run from the date of the registration of this Agreement pursuant to Charter Section 328 and each anniversary date.

- (iv) These requirements do not limit the Design-Builder's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Section will be interpreted so as to require the Design-Builder to employ any particular worker.
- (v) In addition, the provisions of this Section will not apply to positions that the Design-Builder intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the City Administrative Code. The Design-Builder will not be required to report such openings with HireNYC. However, the Design-Builder must enroll with the HireNYC system pursuant to Section 1.03(a), above, and, if such positions subsequently become open, then the remaining provisions of this Section will apply.

(c) **Breach and Liquidated Damages**

If the Design-Builder fails to comply with the terms of this Agreement and this Section (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the DDC may assess liquidated damages in the amount of two- thousand five hundred dollars (\$2,500) per breach. For all other events of noncompliance with the terms of this Section, the DDC may assess liquidated damages in the amount of five hundred dollars (\$500) per breach. Furthermore, in the event the Design-Builder breaches the requirements of this Section during the term of this Agreement, the City may hold the Design-Builder in default of this Agreement.

(d) **Audit Compliance**

In addition to the auditing requirements set forth in other parts of this Agreement, the Design-Builder must permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from this Agreement and located in New York City. The Design-Builder must permit an inspection within seven Business Days of the request.

(e) **Other Reporting Requirements**

The Design-Builder must report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by Applicable Law, including any requirement that the City maintain a publicly accessible database. In addition, the Design-Builder agrees to comply with all reporting requirements imposed by Applicable Law, or as otherwise requested by the City.

1.4 **Hours of Work**

(a) **General**

No laborer, worker, or mechanic in the employ of the Design-Builder, Subcontractor or other person doing or contracting to do the whole or a part of the Work contemplated by this Agreement will be permitted or required to work more than eight hours in any one day, or more than five days in any one week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

(b) **Insufficient Labor**

In situations in which there are not sufficient laborers, workers, and mechanics who may be employed to carry on expeditiously the Work contemplated by this Agreement as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Project Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics will be permitted or required to work more than eight hours in any one day; or five days in any one week; provided, however, that upon application of any Design-Builder, the DDC Commissioner must have first certified to the Commissioner of Labor of the State of New York (hereinafter “**Commissioner of Labor**”) that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor must have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

(c) **Failure of Commissioner to Make Certification**

Failure of the DDC Commissioner to make such a certification to the Commissioner of Labor will not entitle the Design-Builder to damages for delay or for any cause whatsoever.

1.5 **Prevailing Rate of Wages**

(a) **Wage Rates**

The wage rates of workers, or mechanics employed upon the Work contemplated by this Agreement or upon any materials to be used thereon must not be less than the “prevailing rate of wage” as defined in Labor Law Section 220, and as fixed by the City Comptroller in the attached Schedule of Wage Rates and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed.

(b) **Clarifications**

Requests for interpretation or correction in this Agreement includes all requests for clarification of the classification of trades to be employed in the performance of the Work under this Agreement. In the event that a trade not listed in this Agreement is in fact employed during the performance of this Agreement, the Design-Builder will be required to obtain from the DDC the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Agreement at the price at which this Agreement was awarded.

(c) **Enforcement**

The Design-Builder agrees to pay for all costs incurred by the City in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the DDC or the City Comptroller, where the City discovers a failure to comply with any of the requirements of this Section by the Design-Builder or its Subcontractors. The Design-Builder also agrees that, should it fail or refuse to pay for any such investigation, the DDC may deduct from a Design-Builder’s account an amount equal to the cost of such investigation.

- (i) For any breach or violation of either working conditions (Section 1.07) or minimum wages (Section 1.09) provisions, the party responsible for such violation will be liable to the City for liquidated damages, which may be withheld from any amounts due on any contracts with the City of such party responsible, or may be recovered in actions brought by the City Corporation Counsel in the name of the City, in addition to damages for any other breach of this Agreement, for a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Agreement. In addition, DDC will have the right to cancel this Agreement and enter into other contracts for the completion of this Agreement, with or without public letting, and the original Design-Builder will be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, will be held in a special deposit account and will be paid without interest, on order of the City Comptroller, directly to the employees who have been paid less than minimum rates of pay as set out in this Agreement and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments will be entertained unless made within two years from the date of actual notice to the Design-Builder of the withholding or recovery of such sums by the City.
- (ii) A determination by the City Comptroller that a Design-Builder or its Subcontractors, or both, willfully violated Labor Law Section 220 must be forwarded to the City's five District Attorneys for review.
- (iii) The Design-Builder's or its Subcontractor's noncompliance with this Section and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the City Comptroller may also find and determine that the Design-Builder or its Subcontractors willfully violated the New York Labor Law.
  - (a) An unsatisfactory performance evaluation for noncompliance with this Section may result in a determination that the Design-Builder is a non-responsible bidder on subsequent procurements with the City and thus a rejection of a future award of a contract with the City, as well as any other sanctions provided for by Applicable Law.

## 1.6 Posting Requirements

The Design-Builder and its Subcontractors must, within ten days after mailing of a notice of award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the Design-Builder and its Subcontractors engaged in the performance of this Agreement are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages, and other stipulations contained in Sections 220 and 220-h of the Labor Law, and the Design-Builder and its Subcontractors must continue to keep such notices posted in such prominent and conspicuous places until the DDC issues the Certificate of Final Completion under this Agreement.

## 1.7 Working Conditions

No part of the Work, labor or services will be performed or rendered by the Design-Builder in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Agreement. Compliance with the safety, sanitary, and factory inspection Laws of the state in which the Work is to be performed will be prima facie evidence of compliance with this Section.

## 1.8 Other Labor Requirements

The Design-Builder must strictly comply with all of the provisions of Section 1.8(a) through Section 1.8(e), and provide for all workers, laborers or mechanics in its employ, the following:

(a) **Notices Posted at Project Site**

Post, in a location designated by the City, schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, the Workers' Compensation Law Section 51 notice, all other notices required by Applicable Law to be posted at the Project Site, the City notice that this Project is a public works project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which they are working, and all other notices which the City directs the Design-Builder to post. The Design-Builder must provide a surface for such notices which is satisfactory to the City. The Design-Builder must maintain and keep current such notices in a legible manner and must replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The Design-Builder must post such notices before commencing any Work on the Project Site and must maintain such notices until all Work on the Project Site is complete;

(b) **Daily Project Site Sign-in Sheets**

The Design-Builder must maintain either an electronic or biometric sign-in system, and must require that Subcontractors maintain an electronic or biometric sign-in system for its employees, which must include such employee's name, job title, date started and Social Security number, the time the employee began work and the time the employee left work, until the DDC issues the Certificate of Final Completion of the supplies, materials, equipment, or Work, labor, or services to be furnished or rendered under this Agreement unless exception is granted by the City Comptroller upon application by the DDC;

(c) **Individual Employee Information Notices**

Distribute a notice to each worker, laborer or mechanic employed under this Agreement, in a form provided by the DDC, that this Project is a public works project on which each worker, laborer or mechanic is entitled to receive the prevailing rate of wages and supplements for the occupation at which they are working. Such notice must also include a statement that each worker, laborer or mechanic must be certified prior to performing any Work as having successfully completed a course in construction safety and health approved by the United States Department of Labor's Occupational Safety and Health Administration that is at least ten hours in duration. Such notice must be distributed to each worker before they start performing any Work of this Agreement and with the first paycheck after July first of each year. "Worker, laborer or mechanic" includes employees of the Design-Builder and its Subcontractors and all employees of suppliers entering the Project Site. At the time of distribution, the Design-Builder must have each worker, laborer or mechanic sign a statement, in a form provided by the DDC, certifying that the worker has received the notice required by this Section, which signed statement must be maintained with the payroll records required by this Agreement;

The Design-Builder and each Subcontractor must notify each worker, laborer or mechanic employed under or in connection with this Agreement in writing of the prevailing rate of wages for their particular job classification. Such notification must be given to every worker, laborer, and mechanic on their first pay stub and with every pay stub thereafter;

(d) **Project Site Laminated Identification Badges**

The Design-Builder must provide laminated identification badges which include a photograph of the worker's, laborer's or mechanic's face and indicate the worker's, laborer's or mechanic's name, trade, employer's name, and employment starting date (month/day/year). Further, the Design-Builder must require as a condition of employment on the Project Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the City. DDC may grant a written waiver from the requirement that the laminated identification badge include a photograph if the Design-Builder demonstrates that the identity of an individual wearing a laminated identification badge can be easily verified by another method.

(e) **Language Other Than English Used On Project Site**

Provide the DDC notice when three or more employees (worker and/or laborer and/or mechanic) on the Project Site, at any time, speak a language other than English. The DDC may then provide the Design-Builder the notices described in Section 1.8(a) in that language or languages as may be required. The Design-Builder is responsible for all distributions under this Article.

(f) **Provision of Records**

The Design-Builder and its Subcontractors must produce within five days on the Project Site of the Work and upon a written order of the City, including the DDC or the City Comptroller, such records as are required to be kept by this Section;

(g) **Payment**

The Design-Builder and its Subcontractors must pay employees by check or direct deposit. Checks issued by the Design-Builder to covered employees must be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the DDC). For any Subcontract for an amount greater than seven hundred fifty thousand (\$750,000) dollars, checks issued by a Subcontractor to covered employees must be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the DDC); and

(h) **Failure to Comply**

The failure of the Design-Builder or its Subcontractors to comply with the provisions of Section 1.8(a) through Section 1.8(g) may result in the DDC declaring the Design-Builder in default or the withholding of payments otherwise due under this Agreement, or both.

**1.9 Minimum Wage; Living Wage**

Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Design-Builder in the performance of this Agreement must be paid, without subsequent deduction or rebate, unless expressly authorized by Applicable Law, not less than the minimum wage as prescribed by Applicable Law. Any breach of this Section will be deemed a material breach of this Agreement.

**1.10 Non-Discrimination in Employment**

(a) **General Prohibition**

To the extent required by Applicable Law, the Design-Builder must not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or federal laws, rules or regulations. The Design-Builder must comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

(b) **N.Y. Labor Law § 220-e**

The Design-Builder agrees it will comply with N.Y. Labor Law § 220-e and that liquidated damages may be assessed in accordance with such law to the extent the Design-Builder breaches such obligation.

(c) **Admin. Code § 6-108**

The Design-Builder agrees to comply with City Admin. Code § 6-108.

Breach of the foregoing provisions will be deemed a breach of a material provision of this Agreement.

(d) **E.O. 50 -- Equal Employment Opportunity**

(i) The Design-Builder will comply with City Executive Order No. 50 (1980) (“**E.O. 50**”), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* This Agreement must not be executed unless and until these requirements have been complied with in their entirety

(ii) The Design-Builder understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance will constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the DDC Commissioner to impose any or all of the following sanctions:

- (a) if prior to the Agreement Date, disapproval of the Design-Builder;
- (b) Suspension or termination of this Agreement
- (c) Declaring the Design-Builder in default; or
- (d) In lieu of any of the foregoing sanctions, imposition of an employment program, or any combination of (a)-(c).

- (iii) Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the DDC declaring the Design-Builder to be non-responsible.
- (iv) The Design-Builder agrees to include the provisions of the foregoing Section 1.10(d)(i)-(iii) above in every Subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each Subcontractor or vendor. The Design-Builder must take such action with respect to any Subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Design-Builder needed to produce the item contracted for will not be considered a Subcontractor or vendor for purposes of this Section.
- (v) The Design-Builder further agrees that it will refrain from entering into any Subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Design-Builder needed to produce the item contracted for will not be considered a Subcontractor for purposes of this Section.
- (vi) Nothing contained in this Section will be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

#### 1.11 Americans With Disabilities Act

##### (a) General Requirements

This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* (“**ADA**”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Design-Builder must not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the DDC to ensure the Design-Builder’s compliance with the ADA during the term of this Agreement, the Design-Builder must prepare a plan (“**Compliance Plan**”) which lists its program sites and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such sites. If the program site is not readily accessible and usable by individuals with disabilities, Design-Builder must also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Design-Builder must submit the Compliance Plan to the DDC for review within ten days after being directed to do so and must abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

(b) **Failure to Submit Compliance Plan**

The Design-Builder's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the DDC terminating this Agreement.

1.12 **Paid Sick Leave Law**

(a) **Introduction and General Provisions**

- (i) The Design-Builder must comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law ("**PSLL**"), which requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the DDC or of other governmental entities may be required to provide sick time pursuant to the PSLL.
- (ii) The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the DCA. The DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("**Rules**").
- (iii) The Design-Builder agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Design-Builder further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.
- (iv) The Design-Builder must notify the DDC in writing within 10 days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Design-Builder must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

2. **RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

2.1 **Payroll Reports**

(a) **Collection and Submission of Payroll Reports**

The Design-Builder and its Subcontractors must maintain on the Project Site during the performance of the Work the original payrolls or transcripts thereof which the Design-Builder and its Subcontractors are required to maintain and must submit such original payrolls or transcripts, subscribed and affirmed by it as true, within thirty days after issuance of its first payroll, and every thirty days thereafter, pursuant to Labor Law Section 220(3-a)(a)(iii). The Design-Builder and its Subcontractors must submit such original payrolls or transcripts along with each and every payment requisition. If payment requisitions are not submitted at least once a month, the Design-Builder and its Subcontractor must submit original payrolls and transcripts both along with its payment requisitions and independently of its payment requisitions.

(b) **Maintenance of Payroll Reports**

The Design-Builder must maintain payrolls or transcripts thereof for six years from the date of completion of the Work on this Agreement. If such payrolls and transcripts are maintained outside of New York City after the completion of the Work and their production is required pursuant to this Section, the Design-Builder must produce such records in New York City upon request by the City.

(c) **Information Requests**

The Design-Builder and its Subcontractors must comply with any written order, direction, or request made by the DDC, the City Labor Law investigators, or the City Comptroller, to provide to the requesting party any of the following information and/or records within five days of such written order, direction, or request:

- (i) Such original payrolls or transcripts thereof subscribed and affirmed by it as true and the statements signed by each worker pursuant to this Section; and/or
- (ii) Attendance sheets for each day on which any employee of the Design-Builder or its Subcontractors performed Work on the Project Site, which attendance sheet must be in a form acceptable to the DDC and must provide information acceptable to the DDC to identify each such employee; and/or
- (iii) Any other information to satisfy the DDC, the City Labor Law investigators or the City Comptroller, that this Section and the Labor Law, as to the hours of employment and prevailing rates of wages and/or supplemental benefits, are being observed.

(d) **Failure to Comply**

The failure of the Design-Builder or its Subcontractors to comply with the provisions of Section 2.1(a) and/or Section 2.1(b) may result in the DDC declaring the Design-Builder in default and/or the withholding of payments otherwise due under this Agreement.

2.2 **Investigations Clause**

(a) **Design-Builder Cooperation**

Unrelated to any proceedings under or in connection with the Dispute Resolution Procedure, the Design-Builder agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the inspector general of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

(b) **Legal**

- (i) If any person who has been advised that their statement, and any information from such statement, will not be used against them in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority

thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State; or

- (ii) If any person refuses to testify for a reason other than the assertion of their privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the inspector general of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
  - (a) The City will convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
  - (b) If any non-governmental party to the hearing requests an adjournment, the DDC may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 2.2(d) below without the City incurring any penalty or damages for delay or otherwise.

(c) **Penalties**

The penalties that may attach after a final determination by the City may include but will not exceed:

- (i) The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the DDC; and/or
- (ii) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the DDC incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination will be paid by the DDC.

(d) **Determinations**

The City will consider and address in reaching its determination and in assessing an appropriate penalty the factors in Paragraphs (i) and (ii) below. The City may also consider, if relevant and appropriate, the criteria established in Paragraphs (iii) and (iv) below, in addition to any other information that may be relevant and appropriate:

- (i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the

discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;

- (ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity;
- (iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the DDC; and
- (iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 2.2(c) above, provided that the party or entity has given actual notice to the DDC Commissioner upon the acquisition of the interest, or at the hearing called for in Section 2.02(b)(ii)(a) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

(e) **Definitions**

- (i) The term “license” or “permit” as used in this Section will be defined as a license, permit, franchise, or concession not granted as a matter of right.
- (ii) The term “person” as used in this Section will be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (iii) The term “entity” as used in this Section will be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the DDC, or otherwise transacts business with the DDC.
- (iv) The term “member” as used in this Section will be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

(f) **Failure to Report**

In addition to and notwithstanding any other provisions of this Agreement, the DDC may in its sole discretion terminate this Agreement upon not less than three days written notice in the event the Design-Builder fails to promptly report in writing to the Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Design-Builder, or affecting the performance of this Agreement.

3. **ANTITRUST**

3.1 **Antitrust**

The Design-Builder hereby assigns, sells, and transfers to the DDC all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the DDC under this Agreement.

**4. REDUCTIONS IN FUNDING**

**4.1 Reductions in Federal, State, and/or City Funding**

**(a) DDC's Rights**

This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the DDC will have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section will be accompanied by an appropriate reduction in the services performed under this Agreement.

**(b) Notice of Reduction Option**

If DDC opts to exercise its reduction option referred to in Section 10.2(a), above, any such reduction will be effective as of the date set forth in a written notice thereof to the Design-Builder, which will be not less than 30 days from the date of such notice. Prior to sending such notice of reduction, the DDC will advise the Design-Builder that such option is being exercised and afford the Design-Builder an opportunity to make within seven days any suggestions it may have as to which programs, services, service components, staff or staff-hours might be reduced or eliminated, provided, however, that the DDC will not be bound to utilize any of the Design-Builder's suggestions and that the DDC will have sole discretion as to how to effectuate the reductions.

**(c) Payments following Reduction Option**

If the DDC reduces funding pursuant to this Section, the following provisions apply. The DDC will pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Design-Builder on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date will be paid by the DDC in accordance with the terms of this Agreement. In no event will such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Design-Builder and its landlord.

**(d) Medical Assistance Funds**

To the extent that the reduction in public funds is a result of the State determining that the Design-Builder may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section will not apply, and the DDC may reduce such public funds authorized under this Agreement by informing the Design-Builder of the amount of the reduction and revising attachments to this Agreement as appropriate.

**5. ELECTRONIC FUNDS TRANSFER**

**5.1 Electronic Funds Transfer**

**(a) General**

In accordance with Admin. Code § 6-107.1, the Design-Builder agrees to accept payments under this Agreement from the DDC by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Design-Builder must designate one financial institution or other authorized payment agent and must complete the "EFT Vendor Payment Enrollment Form" available from the DDC in order to provide the commissioner of the Department of Finance with information necessary for the Design-Builder to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Design-Builder will constitute full satisfaction by the DDC for the amount of the payment under this Agreement. The account information supplied by the Design-Builder to facilitate the electronic funds transfer will remain confidential to the fullest extent provided by Applicable Law.

**(b) Waiver**

The DDC may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the City Comptroller may jointly issue standards pursuant to which the DDC may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the DDC.

**6. CLAIMS**

**6.1 No Claim Against Officials, Agents, or Employees**

No claim will be made by the Design-Builder against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

**7. APPLICABLE LAW**

**7.1 All Legal Provisions Deemed Included**

Each and every provision required by Applicable Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**7.2 Political Activity**

The Design-Builder's provision of services under this Agreement must not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor may any of the funds provided under this Agreement be used for such purposes.

### 7.3 Religious Activity

There must be no religious worship, instruction, or proselytizing as part of or in connection with the Design-Builder's provision of services under this Agreement, nor may any of the funds provided under this Agreement be used for such purposes.

### 7.4 Participation in an International Boycott

#### (a) Prohibition

The Design-Builder agrees that neither the Design-Builder nor any substantially-owned affiliated company is participating or will participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended by the Export Controls Reform Act of 2018, Public Law No: 115-232, or the regulations of the United States Department of Commerce promulgated thereunder.

#### (b) Determination of Violation

Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Design-Builder or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the federal Export Administration Act of 1979 by the Export Controls Reform Act of 2018, Public Law No: 115-232, the City Comptroller may, at their option, render forfeit and void this Agreement.

#### (c) Compliance

The Design-Builder must comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the City Comptroller thereunder.

### 7.5 Electronic Filing / NYC Development Hub

The Design-Builder will electronically file all alteration type-2 and alteration type-3 applications via the New York City Development Hub Web site, except applications for minor alterations. All such filings must be professionally certified. Information about electronic filing via the New York City Development Hub is available on the City Department of Buildings Web site at [www.nyc.gov/buildings](http://www.nyc.gov/buildings).

### 7.6 Environmentally Preferable Purchasing

The Design-Builder will ensure that products purchased or leased by the Design-Builder or any Subcontractor for the Work that are not specified by the City or are submitted as equivalents to a product specified by the City comply with the requirements of the New York City Environmentally Preferable Purchasing Program contained in Chapter 11 of Title 43 of the RCNY, pursuant to Chapter 3 of Title 6 of the City Administrative Code.

### 7.7 Fair Chance Act

The City encourages the Design-Builder to provide job opportunities to justice involved persons (e.g., formerly incarcerated individuals). The Design-Builder is directed to the Fair Chance Act, which amended the New York City Human Rights Law by making it an unlawful discriminatory practice for most employers to inquire or consider a job applicant's criminal history until after extending a conditional offer of employment and requires an employer to take specific steps if the employer subsequently decides to withdraw the job

offer. Information about the Fair Chance Act and its legal requirements can be found here: <https://www1.nyc.gov/site/cchr/law/fair-chance-act.page>.

## 7.8 MacBride Principles

### (a) Notice To All Prospective Design-Builders

- (i) Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 of the City Administrative Code. The Local Law provides for certain restrictions on City Contracts to express the opposition of the people of the City to employment discrimination practices in Northern Ireland to promote freedom of work-place opportunity.
- (ii) Pursuant to Section 6-115.1, the Design-Builder must sign a rider in which they covenant and represent, as a material condition of this Agreement, that any business operations in Northern Ireland conducted by the Design-Builder and any individual or legal entity in which the Design-Builder holds a ten percent or greater ownership interest in the Design-Builder must be conducted in accordance with the MacBride Principles of nondiscrimination in employment.
- (iii) Prospective Design-Builders are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a contract to supply goods, services or contraction of comparable quality, the DDC will refer such bids to the Mayor or other officials, as appropriate, who may determine, in accordance with Applicable Law, that it is in the best interest of the City that the agreement be awarded to other than the lowest responsible pursuant to Section 313(b)(2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective Design-Builder does not agree to these conditions, no agency, elected official or the City Council will award the Agreement to that bidder unless the agency seeking to use the goods, services or construction certifies in writing that the Agreement is necessary for the Agency to perform its functions and there is no other responsible Design-Builder who will supply goods, services or construction of comparable quality at a comparable price.

In accordance with and to the extent required by Admin. Code § 6-115.1, the Design-Builder stipulates that the Design-Builder and any individual or legal entity in which the Design-Builder holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Design-Builder either (a) have no business operations in Northern Ireland, or (b) will take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and will permit independent monitoring of their compliance with such principles.

### (b) Definition

For purposes of this Article, the “MacBride Principles” will mean those principles relating to nondiscrimination in employment and freedom of work-place opportunity which require employers doing business in Northern Ireland to:

- (i) increase the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;
- (ii) take steps to promote adequate security for the protection of employees from under-represented religious groups both at the work-place and while traveling to and from Work;
- (iii) ban provocative religious or political emblems from the workplace;
- (iv) publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;
- (v) establish layoff, recall, and termination procedures which do not in practice favor a particular religious group;
- (vi) abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (vii) develop training programs that will prepare substantial numbers of current employees from under-represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of workers from under-represented religious groups;
- (viii) establish procedures to assess, identify, and actively recruit employees from under-represented religious groups with potential for further advancement; and
- (ix) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

(c) **Design-Builder Violation**

The Design-Builder agrees that the covenants and representations in 7.8(a) are material conditions to this Agreement. In the event the DDC receives information that the Design-Builder is in violation thereof, the DDC will review such information and give the Design-Builder an opportunity to respond. If the DDC finds that a violation has occurred, the DDC will have the right to declare the Design-Builder in default and/or terminate this Agreement for cause and procure supplies, services or Work from another source in the manner the DDC deems proper. The rights and remedies of the DDC hereunder will be in addition to, and not in lieu of, any rights and remedies the DDC has pursuant to this Agreement or by operation of Applicable Law.

**ATTACHMENT 1**

**Whistleblower Protection Act Poster**



**REPORT  
CORRUPTION, FRAUD, UNETHICAL CONDUCT  
RELATING TO A NYC-FUNDED CONTRACT  
OR PROJECT  
CALL THE NYC DEPARTMENT OF INVESTIGATION  
212-825-5959**

**DOI CAN ALSO BE REACHED BY MAIL**

**OR IN PERSON AT:**

**New York City Department of  
Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038**

**Attention: COMPLAINT BUREAU**

**OR FILE A COMPLAINT ON-LINE AT:**

**[www.nyc.gov/doi](http://www.nyc.gov/doi)**

**All communications are confidential**



**Or scan the QR Code above to make a  
complaint**

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by their employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes they have been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.

**EXHIBIT 17**

**MINOR WAIVER REQUEST FORM**

**MWR No.**

Description: **[Include Description of Request]**

**MWR-XXX**

Contract No.  
XXX-XXX-XXX

Contract Name: **[Include Contract Name]**

**Requirements and Provisions for Work Reference:**

**Reason for Waiver Request:**

**Description of Alternate Proposed (attach additional information as required):**

**Is MWR Time-Sensitive**      Yes  No       **Requested Response Date:**

Design-Builder confirmed there will be no time or cost impact to the City as a result of this Request  
A/EoR confirms they endorse this waiver request with due regard to responsibilities as A/EoR for Design  
Work

**Approval Status:**      **Approved:**       **Conditions:**

**Name/Signature Design-Builder A/EOR]:**      **Date:**

**Authorized by:**      **Title:**      **Date:**  
**[Name/Signature Design-Builder]**

**Approval Status:**      **Approved**       **Rejected**       **Submit More Information**       **Submit Change Proposal**

**Authorized by:**      **Title:**      **Date:**  
**[Name/Signature DDC]**

**EXHIBIT 18**  
**Project Labor Agreement**

2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

**PROJECT LABOR AGREEMENT  
COVERING SPECIFIED  
NEW CONSTRUCTION OF IDENTIFIED CITY OWNED BUILDINGS  
AND STRUCTURES**

**2020 – 2024**

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**PROJECT LABOR AGREEMENT COVERING IDENTIFIED NEW CONSTRUCTION  
OF NEW YORK CITY OWNED BUILDINGS & STRUCTURES**

**ARTICLE 1 - PREAMBLE**

**WHEREAS**, the City of New York desires to provide for the cost efficient, safe, quality, and timely completion of certain new construction work (“Program Work,” as defined in Article 3) in a manner designed to afford the lowest costs to the Agencies covered by this Agreement, and the public it represents, and the advancement of permissible statutory objectives;

**WHEREAS**, this Project Labor Agreement will foster the achievement of these goals, inter alia, by:

(1) providing a mechanism for responding to the unique construction needs associated with this Program Work and achieving the most cost-effective means of construction, including direct labor cost savings, by the Building and Construction Trades Council of Greater New York and Vicinity and the signatory Local Unions and their members waiving various shift and other hourly premiums and other work and pay practices which would otherwise apply to Program Work;

(2) expediting the construction process and otherwise minimizing the disruption to the covered Agencies’ ongoing operations at the facilities that are the subject of the Agreement;

(3) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes, reducing jobsite friction on common situs worksites, and promoting labor harmony and peace for the duration of the Program Work;

(4) standardizing the terms and conditions governing the employment of labor on Program Work;

(5) permitting wide flexibility in work scheduling and shift hours and times to allow maximum work to be done during off hours yet at affordable pay rates;

(6) permitting adjustments to work rules and staffing requirements from those which otherwise might obtain;

(7) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;

(8) fostering increased participation by Minority and Women-owned Business Enterprises (“MWBEs”);

(9) encouraging the development of pathways to construction careers;

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- (10) ensuring a reliable source of skilled and experienced labor; and
- (11) securing applicable New York State Labor Law exemptions.

**WHEREAS**, the Building and Construction Trades Council of Greater New York and Vicinity its participating affiliated Local Unions and their members, desire to assist the City in meeting these operational needs and objectives as well as to provide for stability, security and work opportunities which are afforded by this Project Labor Agreement; and

**WHEREAS**, the Parties desire to maximize Program Work safety conditions for both workers and the community in the project area.

**NOW, THEREFORE**, the Parties enter into this Agreement:

**SECTION 1. PARTIES TO THE AGREEMENT**

This is a Project Labor Agreement (“Agreement”) entered into by the City of New York (“City”), acting through the Department of Design and Construction, on behalf of itself and the Agencies covered herein, including in their capacity as construction manager of covered projects and/or on behalf of any third party construction manager which may be utilized, and the Building and Construction Trades Council of Greater New York and Vicinity (“Council” or “BCTC”) (on behalf of itself) and the signatory affiliated Local Unions (“Unions” or “Local Unions”). The Council and each signatory Local Union hereby warrant and represents that it has been duly authorized to enter into this Agreement.

**ARTICLE 2 - GENERAL CONDITIONS**

**SECTION 1. DEFINITIONS**

A. The term “Agency” means the Department of Design and Construction (“DDC”) or such other City agency that executes an addendum pursuant to Article 3, Section 1(A) of this Agreement; with respect to Program Work as defined in Article 3, the New York City Agency that awards a particular contract subject to this Agreement may be referred to hereafter as the “Agency”;

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B. The term “Agreement” means this project labor agreement (“PLA”), the applicable Schedule “A” Collective Bargaining Agreements (each a “CBA”) identified in Schedule “A”, and each Exhibit hereto;

C. The term “BCTC” refers to the Building and Construction Trades Council of Greater New York and Vicinity. The terms “BCTC” and “Council” are used interchangeably;

D. The term “Contractor(s)” shall include any Construction Manager, General Contractor and all other contractors, and subcontractors of all tiers engaged in Program Work within the scope of this Agreement as defined in Article 3. When an Agency acts as Construction Manager, unless otherwise provided, it has the rights and obligations of a “Construction Manager” in addition to the rights and obligations of an Agency;

E. The term “Core Employee” means an employee that has been on a contractor’s payroll consistent with Article 4, Section 2(B) and (C);

F. The term “Minor Repair” means routine repair, service, or maintenance that is recurrent, day to day, periodic scheduled or routine work required to preserve or restore a building, facility or system to working order;

G. The term “HireNYC Construction Careers” refers to the PLA initiative to advance career opportunities for Program Hires;

H. The term “Program Work” is the work covered by this Agreement as defined in Article 3;

I. The term “Program Hire” means an individual that resides in a zip code where at least 15% of the individuals residing in such zip code are below the federal poverty rate and residents of NYCHA housing regardless of zip codes; and

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

J. The term “Union(s)” or “Local Union(s)” refers to the various participating unions affiliated with the BCTC, singularly and collectively.

### **SECTION 2. CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE**

This Agreement shall not become effective unless each of the following conditions are met: the Agreement is executed by (1) the Council, on behalf of itself, (2) the participating affiliated Local Unions; and (3) the Commissioner of DDC or their designee.

### **SECTION 3. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT**

This Agreement shall be binding on all participating Unions and their affiliates, the Construction Manager (in its capacity as such) and all Contractors of all tiers performing Program Work, as defined in Article 3. The Contractors shall include in any subcontract that they let for performance during the term of this Agreement a requirement that their subcontractors, of all tiers, become signatory and bound by this Agreement with respect to that subcontracted work falling within the scope of Article 3 and all Contractors (including subcontractors) performing Program Work shall be required to sign a “Letter of Assent” in the form annexed hereto as Exhibit “A”. This Agreement shall be administered by the applicable Agency or a Construction Manager or such other designee as may be named by the Agency or Construction Manager, on behalf of all Contractors.

### **SECTION 4. SUPREMACY CLAUSE**

This Agreement, together with the local Collective Bargaining Agreements (each a “CBA”) appended hereto as Schedule “A”, represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other CBA of any type which would otherwise apply to this Program Work, in whole or in part, except for Program Work which falls within the jurisdiction of the Operating Engineers Locals 14 and 15. If Program Work falling within the jurisdiction of Operating Engineers Locals 14 and 15 is accepted by and performed by said

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locals, only then will such work be performed under the terms and conditions set out in the Schedule “A” agreements of Operating Engineers Locals 14 and 15. The CBAs of the affiliated local unions that cover the particular type of construction work to be performed by the contractor, and as set forth in the Schedule “A” list of agreements, shall be deemed the Schedule “A” Collective Bargaining Agreements (“Schedule “A” CBA”) under this Agreement. Where association and independent CBAs for a particular type of construction work are both set forth in Schedule “A”, association members shall treat the applicable association agreement as the Schedule “A” CBA and independent contractors shall treat the applicable independent agreement as the Schedule “A” CBA. Subject to the foregoing, where a subject covered by the provisions of this project labor agreement is also covered by a Schedule “A” CBA, the provisions of this project labor agreement shall prevail. It is further understood that no Contractor shall be required to sign any other agreement as a condition of performing Program Work. No practice, understanding or agreement between a Contractor and a Local Union which is not set forth in this Agreement shall be binding with respect to Program Work unless endorsed in writing by the Construction Manager or such other designee as may be designated by the Agency. Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the covered project. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing covered work.

### **SECTION 5. LIABILITY**

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. The Construction Manager and any Contractor shall not be liable for any violations of this Agreement by any other Contractor; and the Council and Local Unions shall not be liable for any violations of this Agreement by any other Union.

**SECTION 6. THE AGENCY**

The Agency (or Construction Manager where applicable) shall require in its bid specifications for all Program Work within the scope of Article 3 that all successful bidders, and their subcontractors of all tiers, become bound by, and signatory to, this Agreement. The Agency (or Construction Manager) shall not be liable for any violation of this Agreement by any Contractor. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of the Agency or Construction Manager in determining which Contractors shall be awarded contracts for Program Work. It is further understood that the Agency or Construction Manager has sole discretion at any time to terminate, delay or suspend the Program Work, in whole or part, on any project.

**SECTION 7. AVAILABILITY AND APPLICABILITY  
TO ALL SUCCESSFUL BIDDERS**

The Unions agree that this Agreement will be made available to, and will fully apply to, any successful bidder for (or subcontractor of) Program Work who becomes signatory thereto, without regard to whether that successful bidder (or subcontractor) performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder (or subcontractor) are, or are not, members of any unions. This Agreement shall not apply to the work of any Contractor which is performed at any location other than the site of Program Work.

**SECTION 8. SUBCONTRACTING**

Contractors will subcontract Program Work only to a person, firm or corporation who is or agrees to become party to this Agreement.

**ARTICLE 3 - SCOPE OF THE AGREEMENT**

**SECTION 1. WORK COVERED**

A. Program Work shall be limited to new construction contracts bid and let by the Agency (or its Construction Manager where applicable) after the effective date of this Agreement,

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

and advertised for public solicitation prior to December 31, 2024, for new construction on any Project which an addendum has been issued pursuant to the provisions set forth below. Additional Projects may be added to this Agreement through a Project-specific addendum approved by an agency of the City of New York and by the BCTC on behalf of itself and its affiliated Local Unions. Each Project-specific addendum is to outline a description of the project being undertaken, the project's location, and the general findings of the feasibility analysis used as the basis of the determination to utilize a PLA on the project.

B. It is understood that, except where the City specifically applies this Agreement to such work in its bid documents, Program Work does not include, and this Agreement shall not apply to, any other work, including:

1. Contracts let and work performed in connection with projects carried over, recycled from, or performed under bids or rebids relating to work that were bid prior to the effective date of this Agreement or after December 31, 2024;

2. Contracts procured on an emergency basis;

3. Contracts with electric utilities, gas utilities, telephone companies, and railroads, except that it is understood and agreed that these entities may only install their work to a demarcation point, *e.g.*, a telephone closet or utility vault, the location of which is determined prior to construction and employees of such entities shall not be used to replace employees performing Program Work pursuant to this Agreement;

4. Contracts for installation of information technology that are not otherwise Program Work;

5. Contracts that predominantly involve Minor Repair work, as defined in Article 2, Section 1(F) above. Such work is to be paid under the applicable prevailing wage law for

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

service or maintenance work;

6. Up to five percent (5%) of work performed by certified MWBE subcontractors on prime contracts that are valued at \$25,000,000 or more and for which participation goals are set forth in the contract and where such MWBE subcontractor is not signatory to any Schedule “A” agreement (“Exempt Work”). Exempt Work shall be no more than \$500,000 or 15% (whichever is greater) of the value of the subcontracts for work in any particular union’s jurisdiction under any prime contract; and

7. On-site work performed on purchased equipment, which is required by the manufacturer to be performed by its staff or by its selected contractors as a condition of the continued effectiveness of the equipment warranty.

### **SECTION 2. TIME LIMITATIONS**

In addition to falling within the scope of Article 3, Section 1, to be covered by this Agreement, Program Work must be (1) advertised and let for bid after the effective date of this Agreement, and (2) let for bid prior to December 31, 2024, the expiration date of this Agreement. It is understood that this Agreement, together with all of its provisions, shall remain in effect for all such Program Work until completion, even if not completed by the expiration date of the Agreement. If Program Work otherwise falling within the scope of Article 3, Section 1 is not let for bid by the expiration date of this Agreement, this Agreement may be extended to that work by mutual agreement of the parties.

### **SECTION 3. EXCLUDED EMPLOYEES**

The following persons are not subject to the provisions of this Agreement, even though performing Program Work:

A. Superintendents, supervisors (except field surveyors on construction contracts, general and forepersons specifically covered by a craft’s Schedule “A” agreement are included),

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

engineers, professional engineers and/or licensed architects engaged in inspection and testing, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons;

B. Employees of the Agency, New York City, or any other municipal or State agency, authority or entity, or employees of any other public employer, even though working on the project site while covered Program Work is underway;

C. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery, or involved in deliveries to and from the Program site, except to the extent they are lawfully included in the bargaining unit of a Schedule "A" agreement;

D. Employees of the Construction Manager (except that in the event the Agency engages a Contractor to serve as Construction Manager, then those employees of the Construction Manager performing manual, on site construction labor will be covered by this Agreement);

E. Employees engaged in on-site equipment warranty work including installation, repair or maintenance unless employees are already working on the site and are certified to perform warranty work;

F. Employees engaged in geophysical testing other than boring for core samples;

G. Employees engaged in laboratory, specialty testing, or inspections, pursuant to a professional services agreement between the Agency, or any of the Agency's other professional consultants, and such laboratory, testing, inspection or surveying firms;

H. Employees engaged in on-site maintenance of installed equipment or systems which maintenance is awarded as part of a contract that includes Program Work, but which maintenance

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occurs after installation of such equipment or system and is not directly related to construction services; and

I. Employees who perform work classified as Minor Repairs, and routine service and/or maintenance work.

### **SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES**

This Agreement shall not apply to those parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor which do not perform Program Work. It is agreed that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among the Agency (including in its capacity as Construction Manager) or any Contractor. The Agreement shall further not apply to any New York City or other municipal or State agency, authority, or entity other than a listed Agency and nothing contained herein shall be construed to prohibit or restrict the Agency or its employees, or any State, New York City or other municipal or State authority, agency or entity and its employees, from performing on or off-site work related to Program Work.

As the contracts involving Program Work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned in writing (copy to Local Union involved) by the Agency (or Construction Manager) for performance under the terms of this Agreement.

### **ARTICLE 4 - UNION RECOGNITION AND EMPLOYMENT**

#### **SECTION 1. PRE-HIRE RECOGNITION**

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all employees who are performing on-site Program Work, with respect to that work.

**SECTION 2. UNION REFERRAL**

A. The Contractors agree to request, employ and hire craft employees, including Program Hires as defined in Article 2, Section 1(I), for Program Work covered by this Agreement through the job referral systems and hiring halls established in the Local Unions' area CBAs set forth in Schedule "A". Notwithstanding this, Contractors shall have sole right to determine the competency of all referrals; to determine the number of employees required; to select employees for layoff (subject to Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union, subject to the show-up payments. In the event that a Local Union does not fill any request for qualified employees within a 48-hour period after such requisition is made by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of craft employees hired for Program Work within its jurisdiction from any source other than referral by the Union. Any employee hired by a Contractor because a Local Union does not fill a request for qualified employees within a 48 hour period (Saturdays, Sundays and holidays excepted) are not covered by this Agreement for purposes of Article 11, Section 2, unless they are or become a member or agency shop fee payor of an affiliated Union.

B. A Contractor may request by name, and the Local will honor, referral of persons who have applied to the Local for Program Work ("Core Employees") and who meet the following qualifications:

- (1) possess any license required by New York State law for the Program Work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction field during the prior 3 years; and

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

- (3) were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award.

No more than twelve per centum (12%) of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above. Under this provision, name referrals begin with the eighth employee needed and continue on that same basis.

C. Notwithstanding Section 2(B), above, certified MWBE contractors for which participation goals are set forth in New York City Administrative Code §6-129, that are not signatory to any Schedule "A" CBAs, with subcontracts valued at or under two-million dollars (\$2,000,000), may request by name, and the Local will honor, referral of the second (2<sup>nd</sup>), fourth (4<sup>th</sup>), sixth (6<sup>th</sup>), and eighth (8<sup>th</sup>) Core Employee, who have applied to the Local for Program Work and who meet the following qualifications:

- (1) possess any license required by New York State law for the Program Work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction field during the prior 3 years; and
- (3) were on the Contractor's active payroll for at least 60 out of the 365 calendar days prior to the contract award.

D. Where a certified MWBE Contractor voluntarily enters into a CBA with a BCTC Union, the employees of such Contractor at the time the CBA is executed shall be allowed to join the Union for the applicable trade subject to satisfying the Union's basic standards of proficiency for admission.

### **SECTION 3. NON-DISCRIMINATION IN REFERRALS**

The Council represents that each Local Union hiring hall and referral system will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.

### **SECTION 4. MINORITY, FEMALE, LOCAL AND SECTION 3 REFERRALS**

In the event a Local Union either fails, or is unable to refer qualified minority or female applicants in percentages equaling the workforce participation goals adopted by the City and set forth in the Agency's (or, if applicable, Construction Manager's) bid specifications, within 48 hours of the request for same, the Contractor may employ qualified minority or female applicants from any other available source.

The Local Unions agree to prioritize the referral of Program Hires in accordance with Article 13 and to the extent consistent with the law, rules applicable to the union referral systems and joint apprentice programs. Those unions that do not currently provide for zip code preferences in their referral systems will undertake to implement such preferences consistent with this Agreement and their governing documents. Please see Exhibit "C" for a non-exhaustive list of eligible zip codes. Employees from these zip codes that are already on a contractor's workforce, including Core Employees, and referral of apprentices, in accordance with Article 13, Section 1(A) below, shall count towards the referral goals of this Section.

For any Program Work that may become subject to requirements under Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, and any rules, including new or revised rules, that may be published thereunder, the Local Unions acknowledge the Section 3 obligations of the Construction Manager or Contractor, as applicable, and agree to the zip code and NYCHA preferences described above to help implement this Article in a manner that would allow the Construction Manager or Contractor to meet its Section 3 obligations to the greatest extent feasible, and to post any required notices in

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

the manner required by Section 3. The parties also acknowledge that the Construction Manager and Contractor may also fulfill its Section 3 requirements on Program Work by promoting opportunities for excluded employees, as defined by Article 3, Section 3 of this Agreement, on Program Work and, to the extent permitted by Section 3, by promoting opportunities for craft and other employees on non-Program Work.

### **SECTION 5. CROSS AND QUALIFIED REFERRALS**

The Local Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

### **SECTION 6. CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor except where otherwise provided by specific provisions of an applicable Schedule "A" CBA, and provided that all craft forepersons shall be experienced and qualified journeymen in their trade as determined by the appropriate Local Union. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local CBA prohibits a foreperson from working when the craft persons, they are leading exceed a specified number.

### **SECTION 7. ON CALL REPAIR REFERRALS**

A. When an Agency awards a contract under this Agreement that requires the Contractor to have employees available on short notice to make time-sensitive repairs with such contract requiring the Contractor to respond within as little as two hours from the time the Contractor is contacted by the Agency ("On Call, Repair Contract"), the Contractor will, within ten

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

(10) days of being awarded an On Call, Repair Contract subject to this Agreement, notify the appropriate affiliated Union that would perform the work for a contractor that the Contractor has been awarded such a contract and immediately enter into good faith negotiations with such relevant affiliated Union to establish a procedure to receive time sensitive referrals from such affiliated Union(s).

B. In the event the Contractor and the relevant affiliated Union(s) are unable to negotiate a specific, mutually agreeable procedure for on call repair referral procedure within twenty (20) days of commencement of negotiations or prior to commencement of performance of the contract, whichever is earlier, the Contractor and the relevant affiliated Unions will follow the following procedure:

1. Upon notification by a Contractor that it has been awarded an On Call, Repair Contract pursuant to paragraph A above, each relevant affiliate Union shall provide the Contractor with the name and twenty-four (24) hour contact information of an On Call, Repair Contract contact person for urgent on call repair referrals.

2. The relevant affiliated Unions shall prepare a list of individuals eligible and prepared for referral on an immediate basis to respond to the on call repair contractor, which may include the affiliated Unions' service, repair and maintenance division workers where appropriate for repairs that can be made within 24 to 48 hours and paid at the appropriate prevailing wage rates for service and repair or maintenance work. Such list shall be provided to and in the possession of the designated-on call repair contact person for the affiliated Union and available for immediate reference.

3. Individuals on such list must be able to comply with the Contractor's response time pursuant to contract requirements.

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4. The Union's On Call, Repair Contract contact person shall respond to a contractor's request for referrals within a reasonable time of the request so that compliance with the contract shall be possible.

C. In the event that the Contractor makes a request for an on call referral that is compliant with this procedure and a Union is not able to respond to the request, that Union will be deemed to have waived the forty-eight (48) hour referral rule contained in Section 2 above and the Contractor may employ qualified applicants from any other available source that can meet contract requirements for that time-sensitive on call repair work only; provided, however, that any work related to the repair work that is not of a time sensitive nature under the contract shall comply with Section 2. If a Union fails to timely refer a worker and the Contractor employs other workers, the Contractor will e-mail the Agency within 72 hours and the Agency will forward that e-mail to the designated Labor Management Committee contacts.

### **ARTICLE 5 - UNION REPRESENTATION**

#### **SECTION 1. LOCAL UNION REPRESENTATIVE**

Each Local Union representing on-site employees shall be entitled to designate in writing (copy to Contractor involved and Construction Manager) one representative, and/or the Business Manager, who shall be afforded access to the Program Worksite during such time as bargaining unit work is occurring and subject to otherwise applicable policies pertaining to visitors to the site.

#### **SECTION 2. STEWARDS**

A. Each affiliated Union shall have the sole discretion to designate any journey person as a Steward and an alternate Steward. The Union shall notify the Owner and/or Construction Manager as well as the Contractor of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

and will receive the regular rate of pay for their craft classifications. All Stewards shall be working Stewards.

B. In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's trade and, if applicable, subcontractors of their Contractor, but not with the employees of any other trade Contractor. No Contractor shall discriminate against the Steward in the proper performance of Union duties.

C. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule "A" CBA provision providing procedures for the equitable distribution of overtime.

### **SECTION 3. LAYOFF OF A STEWARD**

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a Schedule "A" provision, such provision shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required, except in cases of discipline or discharge for just cause. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

## **ARTICLE 6 - MANAGEMENT'S RIGHTS**

### **SECTION 1. RESERVATION OF RIGHTS**

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their operations including, but not limited to, the right to: direct the work force, including determination as to the number of employees to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; require

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compliance with the directives of the Agency including standard restrictions related to security and access to the site that are equally applicable to Agency employees, guests, or vendors; or the discipline or discharge for just cause of its employees; assign and schedule work; promulgate reasonable Program Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual, as determined by the Contractor, Agency and/or Construction Manager and/or joint working efforts with other employees shall be permitted or observed.

### **SECTION 2. MATERIALS, METHODS & EQUIPMENT**

There shall be no limitation or restriction upon the Contractor's choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source; provided, however, that where there is a Schedule "A" that includes a lawful union standards and practices clauses, then such clause as set forth in Schedule "A" agreements will be complied with, unless there is a lawful Agency specification (or specification issued by a Construction Manager which would be lawful if issued by the Agency directly) that would specifically limit or restrict the Contractor's choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices, and which would prevent compliance with such Schedule "A" clause. The on-site installation or application of such items shall be performed by the craft having jurisdiction over

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such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is performed off-site for Program Work.

### **ARTICLE 7 - WORK STOPPAGES AND LOCKOUTS**

#### **SECTION 1. NO STRIKES-NO LOCK OUT**

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other similar disruptive activity at the Program Work site for any reason by any Union or employee against any Contractor or employer. There shall be no other Union or concerted or employee activity which disrupts or interferes with the operation of the Program Work or the objectives of the Agency at any Program Work site. In addition, failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to this Agreement, or the picket or demonstration line of any other organization, at or in proximity to a Program Work site where the failure to cross disrupts or interferes with the operation of Program Work is a violation of this Article. Should any employees breach this provision, the Unions will use their best efforts to try to immediately end that breach and return all employees to work. There shall be no lockout at a Program Work site by any signatory Contractor, Agency or Construction Manager.

#### **SECTION 2. DISCHARGE FOR VIOLATION**

A Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

#### **SECTION 3. NOTIFICATION**

If a Contractor contends that any Union has violated this Article, it will notify the Local Union involved advising of such fact, with copies of the notification to the Council. The Local

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Union shall instruct and order, the Council shall request, and each shall otherwise use their best efforts to cause, the employees (and where necessary the Council shall use its best efforts to cause the Local Union), to immediately cease and desist from any violation of this Article. If the Council complies with these obligations it shall not be liable for the unauthorized acts of a Local Union or its members. Similarly, a Local Union and its members will not be liable for any unauthorized acts of the Council. Failure of a Contractor or the Construction Manager to give any notification set forth in this Article shall not excuse any violation of Section 1 of this Article.

### **SECTION 4. EXPEDITED ARBITRATION**

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity that may be brought).

A. A party invoking this procedure shall notify J.J. Pierson or Richard Adelman; who shall alternate (beginning with Arbitrator J.J. Pierson) as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 24 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to the alleged violator and Council.

B. The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Council and the Construction Manager, hold a hearing within 48 hours of receipt of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice required by Section 3, above.

C. All notices pursuant to this Article may be provided by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor, Construction

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Manager and Local Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.

D. The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages (any damages issue is reserved solely for court proceedings, if any). The Award shall be issued in writing within 3 hours after the close of the hearing and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

E. The Agency and Construction Manager (or such other designee of the Agency) may participate in full in all proceedings under this Article.

F. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union or Contractor involved, and the Construction Manager.

G. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.

H. The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

**SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION**

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

**ARTICLE 8 - LABOR MANAGEMENT COMMITTEE**

**SECTION 1. SUBJECTS**

The Program Labor Management Committee (the “LMC”) will meet on a regular basis to:

- 1) promote harmonious relations among the Contractors and Unions;
- 2) enhance safety awareness, cost effectiveness and productivity of construction operations;
- 3) protect the public interests;
- 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations;
- and 5) review efforts to meet applicable participation goals for MWBEs and workforce participation goals for Program Hires, minority and female employees.

**SECTION 2. COMPOSITION**

The LMC shall be jointly chaired by a designee of the Agency and the President of the Council. It may include representatives of the Local Unions and Contractors involved in the issues being discussed. The parties shall mutually designate an MWBE representative to participate in appropriate Committee discussions. The Committee may conduct business through mutually agreed upon sub-committees.

**ARTICLE 9 - GRIEVANCE & ARBITRATION PROCEDURE**  
**SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES**

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure of the steps described below, provided, in all cases, that the question, dispute or claim arose during the term of this Agreement. Grievances shall include the City contract number and the Program Work address; such information is posted at the work site if already commenced and is available in the City Record and Notice to Proceed for projects not already commenced.

Local Union grievances as to whether a scope of work is included or excluded from this Agreement shall be submitted to the LMC in the first instance rather than Step 1 below. To be timely, such notice must be given no later than five days prior to the bid opening date advertised in the City Record and bid documents for that contract, or any adjourned date publicly noticed if the grievance is challenging a determination by an Agency that the contract is not subject to this Agreement. Compliance with this limit shall operate as a statute of limitations and shall be a condition precedent to arbitration. For other grievances as to contractor and/or subcontractor scope of work issues, notice of such challenges shall be submitted to the LMC within 7 calendar days after the act, occurrence or event giving rise to the grievance. If the scope of work grievance is not resolved within 21 days of its submission to the LMC, then the grievance may proceed directly to Step 3 below.

**Step 1:**

(a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union business representative or job steward give notice of the claimed violation to the work site representative of the involved

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Contractor and the Construction Manager. To be timely, such notice of the grievance must be given within 7 calendar days after the act, occurrence or event giving rise to the grievance. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, employee and Contractor directly involved unless the settlement is accepted in writing by the Construction Manager (or designee) as creating a precedent.

(b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article 7, Section 1) with any other signatory to this Agreement and, if after conferring, a settlement is not reached within 7 calendar days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

### **Step 2:**

A Step 2 grievance shall be filed with the Agency, the BCTC, the Contractor, and, if the grievance is against a subcontractor, the subcontractor. The Business Manager or designee of the involved Local Union, together with representatives of the involved Contractor and/or a contractor association representative where appropriate, Council, the Construction Manager (or designee), and, if the grievance is against a subcontractor, the subcontractor, shall meet in Step 2 within 7 calendar days of service of the written grievance to arrive at a satisfactory settlement. The BCTC shall schedule the Step 2 meeting.

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### **Step 3:**

(a) If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within 21 calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants, including the Construction Manager or designee) to the BCTC. In the event the matter is not resolved at Step 2, either J.J. Pierson or Richard Adelman, who shall act, alternately (beginning with Arbitrator J.J. Pierson), as the Arbitrator under this procedure, shall be designated at the Step 2 hearing and the BCTC will notify the arbitrator of his designation. After such notification by the BCTC, the local demanding arbitration shall within a reasonable time request the arbitrator to schedule the matter for an arbitration hearing date. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union and employees and the fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union.

(b) Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by written consent of the Construction Manager (or designee), involved Contractor and involved Local Union at the particular step where the extension is agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

### **SECTION 2. LIMITATION AS TO RETROACTIVITY**

No arbitration decision or award, with the exception of those related to compliance with requirements to pay prevailing wages and supplements in accordance with federal or State law, may

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provide retroactivity of any kind exceeding 60 calendar days prior to the date of service of the written grievance on the Construction Manager and the involved Contractor or Local Union.

### **SECTION 3. PARTICIPATION BY AGENCY AND/OR CONSTRUCTION MANAGER**

The Agency and Construction Manager (or such other designee of the Agency) shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these Steps, including Step 3 arbitration.

## **ARTICLE 10 - JURISDICTIONAL DISPUTES**

### **SECTION 1. NO DISRUPTIONS**

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractor. No jurisdictional dispute shall excuse a violation of Article 7.

### **SECTION 2. ASSIGNMENT**

All Program Work assignments shall be made by the Contractor to unions affiliated with the BCTC consistent with the New York Plan for the Settlement of Jurisdictional Disputes (“New York Plan”) and its Greenbook decisions, if any. Where there are no applicable Greenbook decisions, assignments shall be made in accordance with the provisions of the New York Plan and local industry practice.

### **SECTION 3. NO INTERFERENCE WITH WORK**

There shall be no interference or interruption of any kind with the Program Work while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the Contractor until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award.

**ARTICLE 11 - WAGES AND BENEFITS**

**SECTION 1. CLASSIFICATION AND BASE HOURLY RATE**

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the hourly wage rates applicable for those classifications as required by the applicable prevailing wage laws.

**SECTION 2. EMPLOYEE BENEFITS**

A. The Contractors agree to pay on a timely basis contributions on behalf of all employees covered by this Agreement to those established jointly trustee employee benefit funds designated in the applicable CBA in Schedule "A" (in the appropriate Schedule "A" amounts), provided that such benefits are required to be paid on public works under any applicable prevailing wage law. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly required under applicable prevailing wage law. Contractors, not otherwise contractually bound to do so, shall not be required to contribute to benefits, trusts or plans of any kind which are not required by the prevailing wage law provided, however, that this provision does not relieve Contractors signatory to local collective bargaining agreement with any affiliated union from complying with the fringe benefit requirements for all funds contained in the CBA. Furthermore, employees that may remain unaffiliated with any local union at the completion of their employment under the terms of this Agreement may apply for any distributions to which they may be entitled from the funds in accordance with the applicable rules and governing documents of the unions and the employee benefit funds that they have participated in under the terms of this Agreement.

B. 1. Notwithstanding Section 2 (A) above, and subject to 2 (B)(2) below, Contractors who designate Core Employees pursuant to Article 4, Section 2 (B) and (C) that are not signatory to a Schedule "A" agreement and who maintain bona fide private benefit plans that

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satisfy the requirements of Section 220 of the New York State Labor Law, may satisfy the above benefit obligation with respect to those employees by providing those employees with coverage under their private benefit plans (to the extent consistent with Section 220). The total benefit payments to be made on behalf of each such employee must be equal to the total Section 220 supplement amount and any shortfall must be paid by cash supplement to the employee.

2. A contractor that will satisfy its Section 220 obligations in accordance with subsection 2(B)(1) above shall make available to the Agency at the time of contract award a complete set of plan documents for each non-Schedule “A” benefit plan into which contributions will be made and/or coverage provided pursuant to the provisions of Section 2(B)(1) above. The Contractor shall also provide certification from a certified public accountant as to the annualized hourly value of such benefits consistent with the requirements of Section 220.

3. The City shall verify that the alternate benefit plan(s), together with any cash supplement to the employee, is compliant with Section 220 prior to awarding the Contractor a contract covered by this Agreement. In the event the Contractor’s alternate benefit plan(s), together with any cash supplement to the employee, is determined to be compliant with Section 220 and will be utilized by the Contractor on behalf of Article 4, Section 2(B) and (C) Core Employees, the Local Unions have no duty to enforce the Contractor’s obligations on the alternate benefit plan(s) as they are not party to the alternate plan(s) or privy to the terms and conditions of the plan obligations. In the event the City determines the alternate benefit plan(s), together with any cash supplement to the employee, is not compliant with Section 220, the Contractor may, upon executing a Letter of Assent, satisfy its obligations for all employees, including Core Employees, by contributing to the Schedule “A” benefit plans in accordance with the terms of the Schedule “A” agreements.

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C. The Contractors agree to be bound by the written terms of the legally established jointly trustee Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Program Work done under this Agreement and only for those employees to whom this Agreement requires such benefit payments.

D. 1. To the extent consistent with New York City's Procurement Policy Board Rules with respect to prompt payment, as published at [www.nyc.gov/ppb](http://www.nyc.gov/ppb), §4-06(e), and in consideration of the unions' waiver of their rights to withhold labor from a contractor or subcontractor delinquent in the payment of fringe benefits contributions ("Delinquent Contractor"); the Agency agrees that where any such union and/or fringe benefit fund shall notify the Agency, the General Contractor, and the Delinquent Contractor in writing with back-up documentation that the Delinquent Contractor has failed to make fringe benefit contributions to it as provided herein and the Delinquent Contractor shall fail, within ten (10) calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the union and/or fringe benefit fund is in dispute, the Agency shall withhold from amounts then or thereafter becoming due and payable to the General Contractor an amount equal to that portion of such payment due to the General Contractor that relates solely to the work performed by the Delinquent Contractor which the union or fringe benefit fund claims to be due it, and shall remit the amount when and so withheld to the fringe benefit fund and deduct such payment from the amounts then otherwise due and payable to the General Contractor, which payment shall, as between the General Contractor and the Agency, be deemed a payment by the Agency to the General Contractor; provided however, that in any month, such withholding shall not exceed the amount contained in the General Contractor's monthly invoice for work performed by the Delinquent Contractor. The union or its employee

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benefit funds shall include in its notification of delinquent payment of fringe benefits only such amount it asserts the Delinquent Contractor failed to pay on the specific project against which the claim is made and the union or its employee benefit funds may not include in such notification any amount such Delinquent Contractor may have failed to pay on any other City or non-City project.

2. In addition, where a union or employee benefit fund gives notice to the City that a Contractor is Delinquent as defined in subsection 2(D)(1) above and the City determines that the notice includes appropriate back-up documentation that the Contractor is delinquent, the City will promptly, but not later than twenty (20) days after receipt of the notice, provide a copy of said notice to City Agencies. In the event the City determines there is insufficient back-up documentation, it will notify the appropriate union and/or fringe benefit fund promptly, but not later than twenty (20) days after receipt of the Delinquency Notice, and shall include notice of what additional documentation is requested. Any determination by the City that there is insufficient back-up must be reasonable. This provision is intended to enhance compliance with the prevailing wage law and this Agreement with respect to the payment of fringe benefits and is not intended as a substitute for the resolution of a disputed claim pursuant to any applicable law or agreement.

The City and the relevant Agency(s) will thereafter require the Delinquent Contractor to provide cancelled checks or other equivalent proof of payment of benefit contributions that have come due, to be submitted with certified payroll reports for all Program Work covered by this Agreement on which the Delinquent Contractor is engaged, for at least a one-year period or such earlier period if the Contractor is ultimately determined not to be a Delinquent Contractor. Such proof of payment when required is a condition of payment of the Delinquent Contractor's invoices by any entity, including, but not limited to, the City, the relevant Agency(s), Construction Manager, General Contractor, the prime or higher level subcontractor, as is appropriate under the Delinquent

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Contractor's engagement. The union and the funds shall upon request receive copies of the certified payrolls, cancelled checks, or other proof of payment from the City and/or the relevant Agency(s).

E. In the event the General Contractor or Delinquent Contractor shall notify the Agency as above provided that the claim of the union or fringe benefit fund is in dispute, the Agency shall withhold from amounts then or thereafter becoming due and payable to the General Contractor an amount equal to that portion of such payment due to the General Contractor that relates solely to the work performed by the Delinquent Contractor that the union and/or fringe benefit fund claims to be due it, pending resolution of the dispute pursuant to the union's Schedule "A" agreement, and the amount shall be paid to the party or parties ultimately determined to be entitled thereto, or held until the Delinquent Contractor and union or employee benefit fund shall otherwise agree as to the disposition thereof; provided however, that such withholding shall not exceed the amount contained in the General Contractor's monthly invoice for work performed by the Delinquent Contractor. In the event the Agency shall be required to withhold amounts from a General Contractor for the benefit of more than one fringe benefit fund, the amounts so withheld in the manner and amount prescribed above shall be applied to or for such fund in the order in which the written notices of nonpayment have been received by the Agency, and if more than one such notice was received on the same day, proportionately based upon the amount of the union and/or fringe benefit fund claims received on such day. Nothing herein contained shall prevent the Agency from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section one thousand six of the civil practice law and rules or any successor provision thereto.

F. Payment to a fringe benefit fund under this provision shall not relieve the General Contractor or Delinquent Contractor from responsibility for the work covered by the payment. Except as otherwise provided, nothing contained herein shall create any obligation on the part of

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the Agency to pay any union or fringe benefit fund, nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the union/fund and/or fringe benefit and the Agency.

**ARTICLE 12 - HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS**  
**SECTION 1. WORK WEEK AND WORKDAY**

A. The standard work week shall consist of 40 hours of work at straight time rates, Monday through Friday, 8 hours per day, plus ½ hour unpaid lunch period.

B. In accordance with project needs, there shall be flexible start times with advance notice from Contractor to the Union. The Day Shift shall commence between the hours of 6:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 5:30 p.m., for an 8-hour day. The Evening Shift shall commence between the hours of 3:00 p.m. and 6:00 p.m., unless different times are necessitated by the Agency's phasing plans on specific projects. The Night Shift shall commence between the hours of 11:00 p.m. and 2:00 a.m., unless different times are necessitated by the Agency's phasing plans on specific projects. Subject to the foregoing, starting and quitting times shall occur at the Program Work site designated by the Contractor.

C. Scheduling - Except as provided above, Monday through Friday is the standard work week; 8 hours of work plus ½ hour unpaid lunch.

D. Notice - Contractors shall provide not less than 5 days prior notice to the Local Union involved as to the work week and work hour schedules to be worked or such lesser notice as may be mutually agreed upon.

**SECTION 2. OVERTIME**

Overtime shall be paid for any work over eight (8) hours in a day and any work over forty (40) hours in a week. Overtime shall be paid at time and one half (1½) Monday through Saturday. All overtime work performed on Sunday and Holidays will be paid pursuant to the applicable

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Schedule "A". There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who shall be worked, including the use of employees, other than those who have worked the regular or scheduled work week, at straight time rates. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

### SECTION 3. SHIFTS

A. Flexible Schedules - Scheduling of shift work, including Saturday and Sunday work, shall be within the discretion of the Contractor in order to meet Program Work schedules and existing Program Work conditions including the minimization of interference with the mission of the Agency. It is not necessary to work a day shift in order to schedule a second or third shift, or a second shift in order to schedule a third shift, or to schedule all of the crafts when only certain crafts or employees are needed. Shifts must have prior approval of the Agency or Construction Manager and must be scheduled with not less than five workdays' notice to the Local Union or such lesser notice as may be mutually agreed upon.

B. Second and/or Third Shifts - The second shift shall start between 3 p.m. and 6 p.m. and the third shift shall start between 10 p.m. and 2 a.m., subject to different times necessitated by the Agency phasing plans on specific projects. There shall be no reduction in shift hour work. All employees within the same classification performing Program Work will be paid at the same wage rate regardless of the shift or work, subject only to the foregoing provisions.

C. Flexible Starting Times - Shift starting times will be adjusted by the Contractor as necessary to fulfill Program Work requirements subject to the notice requirements of paragraph A.

**SECTION 4. HOLIDAYS**

A. Schedule - There shall be nine (9) recognized holidays on the project:

- |                        |                  |
|------------------------|------------------|
| New Year's Day         |                  |
| Martin Luther King Day | President's Day  |
| Memorial Day           | Veteran's Day    |
| Labor Day              | Thanksgiving Day |
| Independence Day       | Christmas Day    |

All said holidays shall be observed on the calendar date except those holidays which occur on Saturday shall be observed on the previous Friday and those that occur on Sunday shall be observed on the following Monday.

B. Payment - Regular holiday pay, if any, for work performed on such a PLA recognized holiday shall be in accordance with the applicable Schedule "A" for work performed on a holiday, even where the PLA holiday differs from the CBA holidays.

C. Exclusivity - No holidays other than those listed in Section 4(A) above shall be recognized or observed.

**SECTION 5. SATURDAY WORK**

The Contractor may schedule a Saturday workday and such time shall be scheduled and paid at time and one-half (1½) unless the applicable Schedule "A" permits a straight time rate.

**SECTION 6. REPORTING PAY**

A. Employees who report to the work location pursuant to their regular schedule and who are not provided with work shall be paid two hours reporting pay at straight time rates. An employee whose work is terminated early by a Contractor due to severe weather, power failure, fire

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or natural disaster or for similar circumstances beyond the Contractor's control, shall receive pay only for such time as is actually worked. In other instances, in which an employee's work is terminated early (unless provided otherwise elsewhere in this Agreement), the employee shall be paid for their full shift. Contractors shall not be permitted to call, text or email or voicemail employees in advance of their regularly scheduled shift starting time to avoid reporting pay. Notwithstanding the above, in the event that the National Weather Service issues a weather advisory for the area in which the work location is situated, and the entire project is shut down as a result of the Weather Advisory, the Contractor shall be permitted to speak to employees no less than four (4) hours in advance of their shift starting time, unless the Local Union consents to a shorter notice in writing, to advise them not to report to work due to the National Weather Service advisory, and employees who are so notified shall not receive two (2) hours reporting pay if they report to the work location. The Contractor shall make every effort to notify each employee directly and confirm that notification has been received. Voice, text, and email messages left for employees without confirmation of delivery and receipt by employee do not constitute sufficient notice under this provision.

B. When an employee, who has completed their scheduled shift and left the Program Work site, is "called out" to perform special work of a casual, incidental or irregular nature, the employee shall receive overtime pay at the rate of time and one-half of the employee's straight time rate for hours actually worked.

C. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 7 below, they shall be paid only for the actual time worked.

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D. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty, high time or other special premium payments or reduction in shift hours of any kind.

E. There shall be no pay for time not actually worked except as specifically set forth in this Article and except where an applicable Schedule "A" requires a full weeks' pay for forepersons.

### **SECTION 7. PAYMENT OF WAGES**

A. Termination - Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.

### **SECTION 8. EMERGENCY WORK SUSPENSION**

A Contractor may, if considered necessary for the protection of life and/or safety of employees or others, suspend all or a portion of Program Work. In such instances, employees will be paid for actual time worked, except that when a Contractor requests that employees remain at the job site available for work, employees will be paid for that time at their hourly rate of pay.

### **SECTION 9. INJURY/DISABILITY**

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties provided there is still Program Work available for which the employee is qualified and able to perform.

### **SECTION 10. TIME KEEPING**

A Contractor may utilize systems to check employees in and out. Each employee must check in and out and sign a daily sign-in sheet, or other attendance methodology approved in writing by

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

the Agency(s). The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

### **SECTION 11. MEAL PERIOD**

A Contractor shall schedule an unpaid period of not more than 1/2-hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts, or which provides for staggered lunch periods within a craft or trade. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule "A".

### **SECTION 12. BREAK PERIODS**

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

## **ARTICLE 13 - APPRENTICES AND WORKFORCE DEVELOPMENT**

### **SECTION 1. APPRENTICE RATIOS AND REFERRALS**

A. Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices and such other appropriate classifications in the maximum ratio permitted by the New York State Department of Labor ("NYSDOL") or the maximum allowed per trade. Apprentices and such other classifications as are appropriate shall be employed in a manner

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

consistent with the provisions of the appropriate Schedule “A” agreement. The parties encourage, as an appropriate source of apprentice recruitment consistent with the rules and operations of the affiliated unions’ apprentice-programs, the use of the Edward J. Malloy Initiative for Construction Skills, Non-Traditional Employment for Women, New York Helmets to Hardhats, and Pathways to Apprenticeship (P2A). Should a Contractor request that apprentices be provided for Program Work, the referring Local Union shall comply with that request so long as it is consistent with the maximum ratios permitted by NYSDOL.

### **SECTION 2. WORKFORCE DEVELOPMENT**

A. The parties to this Agreement recognize the mutual interest in increasing training and career opportunities for Program Hires. The parties are committed to (i) increasing opportunities for Program Hires in these zip codes in pre-apprenticeship and apprenticeship programs, and (ii) using the work opportunities provided by this Agreement to increase the career opportunities for qualified Program Hires, and (iii) to assure the continued availability of a skilled and qualified, readily available construction workforce for this program and future work. The parties agree to the Workforce Development Program set forth in Exhibit “D”.

B. Specifically, the parties have established an initiative entitled HireNYC Construction Careers, which is an initiative to advance career opportunities for Program Hires.

C. The HireNYC Construction Careers initiative will work with the Mayor’s Office of Workforce Development (“WKDEV”) and its Workforce1 Centers to recruit Program Hires interested in employment in the construction industry.

D. HireNYC Construction Careers intends to capitalize on the work opportunities presented by this Agreement to create a pathway to career opportunities in the construction workforce. To this end the HireNYC Construction Careers initiative includes a workforce goal of at least 30% of all hours worked under this Agreement, including by subcontractors pursuant

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

to Article 3, Section 1(B)(6), to be worked by workers residing within the specified zip codes or NYCHA housing. In order to encourage recruitment of new workers, HireNYC Construction Careers has established a goal that at least 30% of all of those hours are to be worked by apprentices from those zip codes or NYCHA housing.

E. The Contractors and Unions agree to cooperate and participate in the implementation of HireNYC Construction Careers to assist Program Hires with educational and training opportunities related to access to pre-apprenticeship, apprenticeship, and project work as set forth in this Agreement.

F. Reporting Requirements:

i. The Contractors shall report the residence zip code information on all certified payroll reports.

ii. The Local Unions, their referral systems, the affiliated pre-apprentice programs, and Contractors shall cooperate with any protocol developed for monitoring the HireNYC Construction Careers initiative.

iii. The Local Unions shall provide the WKDEV copies of the following reports when such reports are submitted to NYSDOL: *Apprentice Training Recruitment Notification and Minimum Qualifications (AT 505)*, *Apprentice Training Program Affirmative Action Plan (AT 603)*, *Apprenticeship Agreement (AT 401)*, or such alternate reporting system as the parties may negotiate during the term of this Agreement.

G. The City and BCTC agree that no less than annually, the LMC shall review the implementation of HireNYC Construction Careers, as well as Program Hire opportunities afforded as a result of the initiative. The City and BCTC will collaborate to develop monitoring

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

protocol for the purpose of measuring the success of HireNYC Construction Careers. The City and BCTC may, on mutual consent, modify the goals, procedures and protocols, as necessary to afford continued opportunity to Program Hires.

H. To facilitate the commitments set forth in this Agreement, each Local Union shall designate a HireNYC Construction Careers lead representative to work in partnership with WKDEV to implement these workforce and apprenticeship provisions within the union and across City construction contracts.

### **ARTICLE 14 - SAFETY PROTECTION OF PERSON AND PROPERTY**

#### **SECTION 1. SAFETY REQUIREMENTS**

Each Contractor will ensure that applicable OSHA and safety requirements are at all times maintained on the Program Work site and the employees and Unions agree to cooperate fully with these efforts to the extent consistent with their rights and obligations under the law. Employees will cooperate with employer safety policies and will perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Agency from injury or harm, to the extent consistent with their rights and obligations under the law. Failure to do so will be grounds for discipline, including discharge. The Construction Manager and/or Contractor may adopt, and the Unions shall agree to, the Drug and Alcohol Testing Policy attached as Schedule "B".

#### **SECTION 2. CONTRACTOR RULES**

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by the Contractors and the Construction Manager for Program Work. Such rules will be published and posted in conspicuous places throughout the Program Work sites. Any site security and access policies established by the Construction Manager or General Contractor intended for specific application to the construction workforce for Program

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

Work and that are not established pursuant to an Agency directive shall be implemented only after notice to the BCTC and its affiliates and an opportunity for negotiation and resolution by the Labor Management Committee.

### **SECTION 3. INSPECTIONS**

The Contractors and Construction Manager retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

## **ARTICLE 15 - TEMPORARY SERVICES**

### **SECTION 1.**

Temporary services, i.e. all temporary heat, climate control, water, power and light, shall only be required upon the determination of the Agency or Construction Manager, and when used shall be staffed and assigned to the appropriate trade(s) with jurisdiction. Temporary services shall be provided by the appropriate Contractors' existing employees during working hours in which a shift is scheduled for employees of the Contractor. The Agency or Construction Manager may determine the need for temporary services requirements during non-working hours, and when used shall be staffed and assigned to the appropriate trades(s), and which may be limited to one person per applicable trade where practicable. There shall be no stacking of trades on temporary services, provided this does not constitute a waiver of primary trade jurisdiction. In the event a temporary system component is claimed by multiple trades, the matter shall be resolved through the New York Plan for Jurisdictional Disputes.

## **ARTICLE 16 - NO DISCRIMINATION**

### **SECTION 1. COOPERATIVE EFFORTS**

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of creed, race, color, religion, sex, sexual orientation, national

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

origin, marital status, citizenship status, disability, gender identity, age or any other status provided by law, in any manner prohibited by law or regulation.

### **SECTION 2. LANGUAGE OF AGREEMENT**

Any words signifying any gender shall be interpreted to mean any or all gender identities.

### **ARTICLE 17 - GENERAL TERMS**

#### **SECTION 1. PROJECT RULES**

A. The Construction Manager and the Contractors shall establish such reasonable Program Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work. These rules will be explained at the pre-job conference and posted at the Program Work sites and may be amended thereafter as necessary. Notice of amendments will be provided to the appropriate Local Union. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

B. The parties adopt and incorporate the BCTC's Standards of Excellence as annexed hereto as Exhibit "B".

#### **SECTION 2. TOOLS OF THE TRADE**

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

#### **SECTION 3. SUPERVISION**

Employees shall work under the supervision of the craft foreperson or general foreperson.

**SECTION 4. TRAVEL ALLOWANCES**

There shall be no payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

**SECTION 5. FULL WORKDAY**

Employees shall be at their work area at the starting time established by the Contractor, provided they are provided access to the work area. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

**SECTION 6. COOPERATION AND WAIVER**

The Construction Manager, Contractors and the Unions will cooperate in seeking any NYS DOL, or any other government, approvals that may be needed for implementation of any terms of this Agreement. In addition, the Council, on their own behalf and on behalf of its participating affiliated Local Unions and their individual members, intend the provisions of this Agreement to control to the greatest extent permitted by law, notwithstanding contrary provisions of any applicable prevailing wage, or other, law and intend this Agreement to constitute a waiver of any such prevailing wage, or other, law to the greatest extent permissible only for work within the scope of this Agreement, including specifically, but not limited to those provisions relating to shift, night, and similar differentials and premiums. This Agreement does not, however, constitute a waiver or modification of the prevailing wage schedules applicable to work not covered by this Agreement.

**ARTICLE 18 - SAVINGS AND SEPARABILITY**

**SECTION 1. THIS AGREEMENT**

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or if such application may cause the loss of project funding or any New York State Labor Law exemption for all or any part of the Program Work, the provision or provisions involved (and/or its application to

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

particular Program Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the remainder of the Agreement shall remain in full force and effect to the extent allowed by law (and to the extent no funding or exemption is lost), unless the part or parts so found to be in violation of law or to cause such loss are wholly inseparable from the remaining portions of the Agreement and/or are material to the purposes of the Agreement. In the event a court of competent jurisdiction finds any portion of the Agreement to trigger the foregoing, the parties will immediately enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the court determination and the intent of the parties hereto for contracts to be let in the future.

### **SECTION 2. THE BID SPECIFICATIONS**

In the event that the Agency's (or Construction Manager's) bid specifications, or other action, requiring that a successful bidder (and subcontractor) become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, or may cause the loss of project funding or any New York State Labor Law exemption for all or any part of the Program Work, such requirement (and/or its application to particular Program Work, as necessary) shall be rendered, temporarily or permanently, null and void, but where practicable the Agreement shall remain in full force and effect to the extent allowed by law and to the extent no funding or exemption is lost. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in construction only where the Agency and Contractor voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court or other action taken and the intent of the parties for contracts to be let in the future.

**SECTION 3. NON-LIABILITY**

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the Agency, the Construction Manager, any Contractor, nor any Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order or injunction, other determination, or in order to maintain funding or a New York State Labor Law exemption for Program Work. Bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

**SECTION 4. NON-WAIVER**

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to signatory Contractors and signatory Unions.

**ARTICLE 19 - FUTURE CHANGES IN SCHEDULE "A" AREA CONTRACTS**

**SECTION 1. CHANGES TO AREA CONTRACTS**

A. Schedule "A" to this Agreement shall continue in full force and effect until the Contractor and/or Union parties to the Area CBAs that are the basis for the Schedule "A" notify the Mayor's Office of Contract Services ("MOCS"), Agency and Construction Manager in writing by providing a copy of the updated CBA(s) incorporating the changes agreed to in that Area CBA which are applicable to work covered by this Agreement and their effective dates.

B. It is agreed that any provisions negotiated into Schedule "A" CBAs will not apply to work under this Agreement if such provisions are less favorable to those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied on Program Work if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

C. Any disagreement between signatories to this Agreement over the incorporation into Schedule "A" of provisions agreed upon in the renegotiation of Area CBAs shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

### **SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS**

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Program Work by any Local Union involved in the renegotiation of Area Local CBAs nor shall there be any lock-out on such Program Work affecting a Local Union during the course of such renegotiations.

### **ARTICLE 20 - WORKERS' COMPENSATION ADR**

#### **SECTION 1.**

An Alternative Dispute Resolution ("ADR") program may be negotiated and participation in the ADR program will be optional by trade.

### **ARTICLE 21 - HELMETS TO HARDHATS**

#### **SECTION 1.**

The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the New York City Helmets to Hardhats Program ("H2H") to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

#### **SECTION 2.**

The Unions and Contractors agree to coordinate with H2H to create and maintain an integrated database of veterans interested in working on this project and of apprenticeship and

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employment opportunities for this project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

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2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective as

of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

FOR BUILDING AND CONSTRUCTION TRADES COUNCIL  
OF GREATER NEW YORK AND VICINITY

BY: *Gary La Barbera*  
Gary LaBarbera  
President

FOR NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION

BY: *Lorraine Grillo*  
Lorraine Grillo  
Commissioner

APPROVED AS TO FORM:

*Steve Stein Cohen*  
ACTING CORPORATION COUNSEL  
NEW YORK CITY

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<b>LIST OF SIGNATORY UNIONS</b>
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No.5
Bricklayers and Allied Craftworkers, Local Union No. 1
Building Concrete & Excavating Laborers, Local Union No. 731
N.Y.C. and Vicinity District Council of Carpenters
Cement Masons, Local Union No. 780
Concrete Workers District Council No. 16
Asbestos, Lead & Hazardous Waste, Laborers Local Union No. 78
Construction & General Building Laborers Local Union No. 79
Derrickmen and Riggers Local Union No. 197
International Brotherhood of Electrical Workers, Local Union No. 3
International Union of Elevator Constructors, Local Union No. 1
Heat & Frost Insulators & Allied Workers, Local Union No. 12
Heat & Frost Insulators & Allied Workers, Local Union No. 12A
Pavers & Road Builders, Laborers Local Union No. 1010
New York State Iron Workers District Council
Structural Iron Workers, Local Union No. 40
Structural Iron Workers, Local Union No. 361
Mason Tenders District Council
Metallic Lathers & Reinforcing Ironworkers, Local No. 46
Ornamental Iron Workers, Local Union No. 580
Glaziers No. 1087, District Council 9
Painters, District Council No. 9
Metal Polishers, Local Union No. 8A-28A; District Council No. 9
Drywall Tapers Local Union No 1974, District Council 9
Bridge & Structural Steel Painters, Local Union No. 806, District Council 9
Operative Plasterers Local Union No. 262
UA Plumbers Local Union No. 1
Private Sanitation, Teamsters Local Union No. 813
Roofers & Waterproofers, Local Union No. 8
Sheet Metal Workers, Local Union No. 28
Sheet Metal Workers, Local Union No. 137
UA Steamfitters, Local Union No. 638
Teamsters, Local Union No. 282
Tile, Marble & Terrazzo, B.A.C. Local Union No. 7

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SCHEDULE "A" - CBAs

Union	Current Agreement w/
Architectural and Ornamental Iron Workers Local Union 580, AFL-CIO	Allied Building Metal Industries, Inc.
Building, Concrete, Excavating & Common Laborers Local 731	Independent
Building, Concrete, Excavating & Common Laborers Local 731	Members of the General Contractors Association of New York, Inc.
Bricklayers Local 1 of the International Union of Bricklayers and Allied Craftworkers	Independent
District Council No. 9, I.U.P.A.T Glaziers Local 1087	Window and Plate Glass Dealers Association
Drywall Tapers and Painters Local 1974, affiliated with International Union of Painters & Allied Trades and Drywall Taping Contractor's Association & Association of Wall-Ceiling & Carpentry Industries NY, Inc.	Independent
Enterprise Association of Steamfitters and Apprentices Local 638	Mechanical Contractors Association of NY, Inc.
Enterprise Association of Steamfitters and Apprentices Local 638	Independent
Elevator Constructors Local 1 of NY and NJ	ThyssenKrupp Elevator Corporation
Elevator Constructors Local 1 of NY and NJ	Independent
Highway Road and Street Laborers Local Union 1010 of the District Council of Pavers and Road Builders of the Laborers' International Union of North America AFL-CIO	Independent
Highway Road and Street Laborers Local Union 1010 of the District Council of Pavers and Road Builders of the Laborers' International Union of North America AFL-CIO	Member of the General Contractors Association of New York, Inc.
International Association of Heat and Frost Insulators and Allied Workers Local No. 12 of New York City	Independent
International Association of Heat and Frost Insulators and Allied Workers Local No. 12 of New York City	The Insulation Contractors Association of New York City, Inc.

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International Association of Heat and Frost Insulators and Allied Workers Local No. 12A of New York City	Independent
International Association of Heat and Frost Insulators and Allied Workers Local No. 12A of New York City	Environmental Contractors Association, Inc.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 5	Boilermakers Association of Greater New York
Local Union No. 3 International Brotherhood of Electrical Workers, AFL-CIO	New York Electrical Contractors Association
International Brotherhood of Teamsters, Local 282, High Rise Contract	Building Contractors Association & Independents
Local 46 Metallic Lathers Union and Reinforcing Iron Workers of NY and Vicinity of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers	Cement League
Local 46 Metallic Lathers Union and Reinforcing Iron Workers of NY and Vicinity of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers	Independent
Local 8 Roofers, Waterproofers & Allied Workers	Roofing and Waterproofing Contractors Association of New York and Vicinity
Local Union 1 of the United Association of Journeymen and Apprentices of the Pipe Fitting Industry of the United States and Canada	Association of Contracting Plumbers of the City of New York
Local Union Number 40 & 361 of Bridge, Structural Ornamental and Reinforcing Iron Workers AFL-CIO	Independent
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Building Contractors Association
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Interior Demolition Contractors Association
Mason Tenders DC & Laborers' International Union – Local 78 & 79	Independent
Mason Tenders DC & Laborers' International Union – Local 78 & 79	NYCDCA

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Mason Tenders DC & Laborers' International Union – Local 78 & 79	Environmental Contractors Association
Mason Tenders DC & Laborers' International Union – Local 78 & 79	ABMC
Operative Plasterers' and Cement Masons' International Association Local No. 262	Independent
Painters and Allied Trades AFL-CIO, District Council No. 9 (Painting and Protective Coatings CBA)	Independent
Painters and Allied Trades AFL-CIO, District Council No. 9 (Painting and Protective Coatings CBA)	The Association of Master Painters & Decorators of NY, Inc. and The Association of Wall, Ceiling & Carpentry Industries of NY, Inc. and The Window and Plate Glass Dealers Association
Sheet Metal Workers' International Association, Local 28	Sheet Metal & Air Conditioning Contractors Association of New York City, Inc.
Sheet Metal Workers' International Association, Local 137	The Greater New York Sign Association
Structural Steel and Bridge Painters Local 806, DC 9 International Union of Painters and Allied Trades, AFL-CIO	New York Structural Steel Painting Contractors Association
Teamsters Local 813	Independent
Teamsters Local 813	IESI NY Corporation
The Cement Masons' Union, Local 780	Cement League
The District Council of Cement and Concrete Workers (comprised of Local 6A; Local 18A and Local 20)	Cement League
The District Council of Cement and Concrete Workers (comprised of Local 6A; Local 18A and Local 20)	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Heavy Carpenters	GCA
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Dockbuilders Local No. 1556	Concrete Contractors of NY

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The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Dockbuilders Local 1556	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Millwright Local 740	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Timbermen Local 1556	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Timbermen Local 1556	GCA
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Heavy Carpenters	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Carpenters	Manufacturing Woodworkers Association of Greater New York Incorporated
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	The Hoisting Trade Association of New York, Inc.
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	The Test Boring Association
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	Building Contractors Association
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America	The Association of Wall-Ceiling & Carpentry Industries of New York, Incorporated
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners	The Cement League
The District Council of NYC and Vicinity of the United Brotherhood of Carpenters and Joiners of America	New York City Millwright Association

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The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners	Greater New York Floor Covering Association
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Carpenters	Association of Architectural Metal & Glass
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Carpenters	Concrete Contractors of NY
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Building Construction Carpenters	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Local 2287	Independent
The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America for Shop Carpenters	Independent
The Tile Setters and Tile Finishers Union of New York and New Jersey, Local 7 of the International Bricklayers and Allied Craftworkers	The Greater New York and New Jersey Contractors Association
United Derrickmen & Riggers Association, Local 197 of NY, LI, Westchester & Vicinity	Contracting Stonesetters Association Inc.
United Derrickmen & Riggers Association Local 197 of NY, LI, Westchester and Vicinity	Building Stone and Pre-cast Contractors Association

2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

**Exhibit A**

**Project Labor Agreement - Letter of Assent**

Dear: \_\_\_\_\_

The undersigned party confirms that it agrees to be a party to and be bound by the New York Agency, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project known as the NYC Agency Renovation and located at \_\_\_\_\_ (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the Project Labor Agreement, a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all schedules; amendments and supplements now existing or which are later made thereto;
- (2) Agrees to be bound by the legally established collective bargaining agreements; local trust agreements for employee benefit funds; and trust documents for joint apprentice programs as well as apprentice program rules and procedures but only to the extent of Program Work and as required by the PLA.
- (3) Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor but only to the extent of Program Work as required by the PLA.
- (4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier subcontractor it has engaged or may engage to work on the Project. Labor harmony disputes/issues shall be subject to the Labor Management Committee provisions.
- (5) Agrees to secure from any Contractor(s) (as defined in said Agreement) which is or becomes a Subcontractor (of any tier), to it, a duly executed Agreement to be Bound in from identical to this document.

Provide description of the Work, identify craft jurisdiction(s) and all contract numbers below:

Local Union: \_\_\_\_\_

Description of Work: Queens Site Parking Garage

Contract Number(s): BBJ-QGAR / DDC PIN: 8502020CR0040P

2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

Dated: 1/28/2021

\_\_\_\_\_  
(Name of Contractor or subcontractor)

WALTER ROBERTS, CG

(Name of CM; GC; Contractor or  
Higher Level Subcontractor)

\_\_\_\_\_  
(Authorized Officer & Title)

Kevin Barrett

(Signature)

KEVIN BARRETT  
EVP

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone) (Fax)

Contractor's State License  
# \_\_\_\_\_

Sworn to before me this  
28 day of Jan 2021,

Vladimir Semiglaov

Notary Public

VLADIMIR SEMIGLAZOV  
Notary Public, State of New York  
Reg. No. 01SE6368628  
Qualified In Queens County  
Commission Expires 12/18/2021

**Exhibit B**

**NEW YORK CITY BUILDING AND CONSTRUCTION TRADES COUNCIL  
STANDARDS OF EXCELLENCE**

The purpose of this Standard of Excellence is to reinforce the pride of every construction worker and the commitment to be the most skilled, most productive and safest workforce available to construction employers and users in the City of New York. It is the commitment of every affiliated local union to use our training and skills to produce the highest quality work and to exercise safe and productive work practices.

The rank and file members represented by the affiliated local unions acknowledge and adopt the following standards:

- *Provide a full day's work for a full days pay;*
- *Safely work towards the timely completion of the job;*
- *Arrive to work on time and work until the contractual quitting time;*
- *Adhere to contractual lunch and break times;*
- *Promote a drug and alcohol-free work site;*
- *Work in accordance with all applicable safety rules and procedures;*
- *Allow union representatives to handle job site disputes and grievances without resort to slowdowns, or unlawful job disruptions;*
- *Respect management directives that are safe, reasonable and legitimate;*
- *Respect the rights of co-workers;*
- *Respect the property rights of the owner, management and contractors.*

The Unions affiliated with the New York City Building and Construction Trades Council will expect the signatory contractors to safely and efficiently manage their jobs and the unions see this as a corresponding obligation of the contractors under this Standard of Excellence. The affiliated unions will expect the following from its signatory contractors:

- *Management adherence to the collective bargaining agreements;*
- *Communication and cooperation with the trade foremen and stewards;*
- *Efficient, safe and sanitary management of the job site;*
- *Efficient job scheduling to mitigate and minimize unproductive time;*
- *Efficient and adequate staffing by properly trained employees by trade;*
- *Efficient delivery schedules and availability of equipment and tools to ensure efficient job progress;*
- *Ensure proper blueprints, specifications and layout instructions and material are available in a timely manner*
- *Promote job site dispute resolution and leadership skills to mitigate such disputes;*
- *Treatment of all employees in a respectful and dignified manner acknowledging their contributions to a successful project.*

The affiliated unions and their signatory contractors shall ensure that both the rank and file members and the management staff shall be properly trained in the obligations undertaken in the Standard of Excellence.

2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

**Exhibit “C” - HireNYC Construction Careers**

*(August 2020 version)*

Non-exhaustive list of zip codes where at least 15% of the individuals are below the federal poverty rate  
(Zip codes within ~100 mile radius of NYC)

<b>Zip Code</b>	<b>Borough</b>	<b>Neighborhood</b>
10001	Manhattan	Midtown South
10002	Manhattan	Chinatown
10009	Manhattan	East Village
10025	Manhattan	Manhattan Valley
10026	Manhattan	Central Harlem
10027	Manhattan	Manhattanville
10029	Manhattan	East Harlem
10030	Manhattan	Central Harlem
10031	Manhattan	Hamilton Heights
10032	Manhattan	Inwood and Washington Heights
10033	Manhattan	Washington Heights
10034	Manhattan	Inwood
10035	Manhattan	East Harlem
10037	Manhattan	Central Harlem
10038	Manhattan	Lower Manhattan
10039	Manhattan	Central Harlem
10040	Manhattan	Inwood and Washington Heights
10301	Staten Island	St. George
10302	Staten Island	Port Richmond
10303	Staten Island	Mariner's Harbor
10304	Staten Island	Stapleton
10310	Staten Island	West Brighton
10451	Bronx	Concourse Village
10452	Bronx	High Bridge
10453	Bronx	University Heights
10454	Bronx	Mott Haven
10455	Bronx	Longwood
10456	Bronx	Melrose
10457	Bronx	Central Bronx
10458	Bronx	Bedford Park
10459	Bronx	Morrisania
10460	Bronx	East Tremont
10462	Bronx	Parkchester
10463	Bronx	Kingsbridge
10466	Bronx	Wakefield
10467	Bronx	Norwood
10468	Bronx	Bronx Park and Fordham
10472	Bronx	Unionport
10473	Bronx	Soundview
10474	Bronx	Hunts Point

# 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

## PLA Exhibit C - HireNYC Construction Careers

(August 2020 version)

Non-exhaustive list of zip codes where at least 15% of the individuals are below the federal poverty rate  
(Zip codes within ~100 mile radius of NYC)

<b>Zip Code</b>	<b>Borough</b>	<b>Neighborhood</b>
11101	Queens	Long Island City
11102	Queens	Northwest Queens
11106	Queens	Ravenswood
11203	Brooklyn	East Flatbush
11204	Brooklyn	Borough Park
11205	Brooklyn	Fort Greene
11206	Brooklyn	East Williamsburg
11207	Brooklyn	East New York
11208	Brooklyn	East New York / Cypress Hills
11211	Brooklyn	Williamsburg
11212	Brooklyn	Brownsville
11213	Brooklyn	Crown Heights
11214	Brooklyn	Bensonhurst
11216	Brooklyn	Central Brooklyn
11218	Brooklyn	Kensington
11219	Brooklyn	Borough Park
11220	Brooklyn	Sunset Park
11221	Brooklyn	Bushwick
11223	Brooklyn	Gravesend
11224	Brooklyn	Coney Island
11225	Brooklyn	Prospect Lefferts Gardens
11226	Brooklyn	Prospect Park South
11230	Brooklyn	Midwood
11232	Brooklyn	Sunset Park
11233	Brooklyn	Ocean Hill
11235	Brooklyn	Brighton Beach
11237	Brooklyn	Bushwick and Williamsburg
11239	Brooklyn	Starrett City
11354	Queens	Downtown Flushing
11355	Queens	Queensboro Hill
11368	Queens	South Corona
11369	Queens	East Elmhurst
11373	Queens	Elmhurst
11416	Queens	Southwest Queens
11417	Queens	Ozone Park
11418	Queens	Richmond Hill
11430	Queens	Ozone Park
11432	Queens	Jamaica Center
11433	Queens	South Jamaica
11435	Queens	Briarwood
11691	Queens	Far Rockaway
11692	Queens	Arverne

Data Source: 2013-2017 American Community Survey 5-year estimates

# 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

## PLA Exhibit C - HireNYC Construction Careers

(August 2020 version)

Non-exhaustive list of zip codes where at least 15% of the individuals are below the federal poverty rate

(Zip codes within ~100 mile radius of NYC)

<b>Zip Code</b>	<b>State</b>	<b>City or Town</b>
06401	CT	Ansonia
06510	CT	New Haven
06511	CT	New Haven
06513	CT	New Haven
06515	CT	New Haven
06519	CT	New Haven
06604	CT	Bridgeport
06605	CT	Bridgeport
06607	CT	Bridgeport
06608	CT	Bridgeport
06610	CT	Bridgeport
06702	CT	Waterbury
06704	CT	Waterbury
06705	CT	Waterbury
06706	CT	Waterbury
06708	CT	Waterbury
06710	CT	Waterbury
06810	CT	Danbury
07002	NJ	Bayonne
07017	NJ	East Orange
07018	NJ	East Orange
07022	NJ	Fairview
07026	NJ	Garfield
07029	NJ	Harrison
07047	NJ	North Bergen
07050	NJ	Orange
07055	NJ	Passaic
07060	NJ	Plainfield
07062	NJ	Plainfield
07087	NJ	Union City
07093	NJ	West New York
07102	NJ	Newark
07103	NJ	Newark
07104	NJ	Newark
07105	NJ	Newark
07106	NJ	Newark
07107	NJ	Newark
07108	NJ	Newark
07111	NJ	Irvington
07112	NJ	Newark
07114	NJ	Newark
07201	NJ	Elizabeth
07202	NJ	Elizabeth
07206	NJ	Elizabethport
07208	NJ	Elizabeth
07304	NJ	Jersey City
07305	NJ	Jersey City
07306	NJ	Jersey City
07307	NJ	Jersey City
07310	NJ	Jersey City

# 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

## PLA Exhibit C - HireNYC Construction Careers

(August 2020 version)

Non-exhaustive list of zip codes where at least 15% of the individuals are below the federal poverty rate

(Zip codes within ~100 mile radius of NYC)

<b>Zip Code</b>	<b>State</b>	<b>City or Town</b>
07501	NJ	Paterson
07502	NJ	Paterson
07503	NJ	Paterson
07504	NJ	Paterson
07505	NJ	Paterson
07513	NJ	Paterson
07514	NJ	Paterson
07522	NJ	Paterson
07524	NJ	Paterson
07608	NJ	Teterboro
07703	NJ	Fort Monmouth
07712	NJ	Asbury Park
07727	NJ	Farmingdale
07734	NJ	Keansburg
07740	NJ	Long Branch
07820	NJ	Allamuchy
07939	NJ	Lyons
08031	NJ	Bellmawr
08045	NJ	Lawnside
08095	NJ	Winslow
08102	NJ	Camden
08103	NJ	Camden
08104	NJ	Camden
08105	NJ	Camden
08110	NJ	Pennsauken
08217	NJ	Elwood
08224	NJ	New Gretna
08608	NJ	Trenton
08609	NJ	Trenton
08611	NJ	Trenton
08618	NJ	Trenton
08638	NJ	Trenton
08701	NJ	Lakewood
08751	NJ	Seaside Heights
08808	NJ	Broadway
08861	NJ	Perth Amboy
08901	NJ	New Brunswick
10545	NY	Maryknoll
10550	NY	Mount Vernon
10601	NY	White Plains
10701	NY	Yonkers
10703	NY	Yonkers
10705	NY	Yonkers
10801	NY	New Rochelle
10927	NY	Haverstraw
10932	NY	Howells
10940	NY	Middletown
10950	NY	Monroe
10952	NY	Monsey
10963	NY	Otisville
10977	NY	Spring Valley

# 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

## PLA Exhibit C - HireNYC Construction Careers

*(August 2020 version)*

Non-exhaustive list of zip codes where at least 15% of the individuals are below the federal poverty rate  
(Zip codes within ~100 mile radius of NYC)

<b>Zip Code</b>	<b>State</b>	<b>City or Town</b>
11096	NY	Inwood
11550	NY	Hempstead
11556	NY	Uniondale
11713	NY	Bellport
11798	NY	Wyandanch
11951	NY	Mastic Beach
11970	NY	South Jamesport
12401	NY	Kingston
12416	NY	Chichester
12419	NY	Cottkill
12427	NY	Elka Park
12428	NY	Ellenville
12432	NY	Glasco
12457	NY	Mount Tremper
12475	NY	Ruby
12489	NY	Wawarsing
12490	NY	West Camp
12491	NY	West Hurley
12516	NY	Copake
12550	NY	Newburgh
12561	NY	New Paltz
12583	NY	Tivoli
12589	NY	Wallkill
12594	NY	Wingdale
12601	NY	Poughkeepsie
12701	NY	Monticello
12725	NY	Claryville
12729	NY	Cuddebackville
12732	NY	Eldred
12733	NY	Fallsburg
12743	NY	Highland Lake
12747	NY	Hurleyville
12749	NY	Kauneonga Lake
12751	NY	Kiamesha Lake
12754	NY	Liberty
12758	NY	Livingston Manor
12759	NY	Loch Sheldrake
12762	NY	Mongaup Valley
12763	NY	Mountain Dale
12779	NY	South Fallsburg
12780	NY	Sparrow Bush
19007	PA	Bristol
19123	PA	Philadelphia
19125	PA	Philadelphia
19134	PA	Philadelphia
19135	PA	Philadelphia
19136	PA	Philadelphia
19137	PA	Philadelphia

Data Source: 2013-2017 American Community Survey 5-year estimates

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**EXHIBIT “D”**  
**MEMORANDUM OF UNDERSTANDING**

**MEMORANDUM OF UNDERSTANDING**, entered into as of \_\_\_\_\_, between the City of New York ("City") with an office located at City Hall, New York, NY 10007, the Building and Construction Trades Council of Greater New York and Vicinity ("BCTC"), on its behalf and on behalf of its affiliated unions, with its principal place of business located at 350 West 31st Street, New York, NY 10001, and the Building Trade Employers' Association of New York City ("BTEA"), on its behalf and on behalf of its affiliated contractors, with its principal place of business located at 1325 Avenue of the Americas, New York, NY 10019.

WHEREAS, since 2009, the City, the BCTC, and the BTEA have entered into Memoranda of Understanding (each an "MOU"), contemporaneous to the City entering to Project Labor Agreements with the BCTC (each a "PLA"), setting goals on new apprenticeship opportunities for graduates of direct entry pre-apprenticeship programs for low-income New Yorkers, minorities, high school students, women, veterans, NYCHA residents, and qualified employees of Minority- and Women-Owned Business Enterprises ("M/WBEs") that become signatory to the union, and have provided increased opportunities for New Yorkers to have access to good union construction careers;

WHEREAS, in 2014, the City and the BCTC entered into an MOU related to the New York City Build It Back Program and committed to encourage contractors and subcontractors to employ Sandy-impacted residents and for the City and the BCTC to work together with community-based organizations to recruit and train New York City residents, with an emphasis on Sandy-impacted low income residents;

WHEREAS, the BCTC and the BTEA committed to: (i) promote the representation of veterans, women, high school graduates of the City's public schools, and New Yorkers in need of economic opportunity in apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors, and (ii) improve workforce training and development for entrance into the construction industry;

WHEREAS, in 2014, the City of New York issued *Career Pathways: One City Working Together*, with a commitment to maximize local job opportunities through the City's contracts, and as such the City is committed to ensuring that low-income New Yorkers have access to the good jobs and careers that are created through the City's capital investments and through this MOU and contemporaneous PLA, the City the BCTC, and with the cooperation of the BTEA contractors can connect low-income New Yorkers to good prevailing wage construction careers;

WHEREAS, through this MOU and contemporaneous PLAs, the City, the BCTC, and the BTEA commit to recruiting in low-income communities, providing opportunities through pre-apprenticeship and apprenticeship programs for access to construction careers, and ensuring residents of low-income communities, including apprentices, are provided opportunities to work on publicly-funded and -assisted construction projects;

WHEREAS, pursuant to Local Law 1 of 2013, the City is also committed to its M/WBE program, and in partnership with the M/WBE Leadership Association seeks to encourage eligible companies to certify as M/WBEs, and provides a wide range of training and technical assistance to build the capacity of its certified companies to bid successfully for the City's contracts and subcontracts;

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

WHEREAS, an important element in the success of pre-apprenticeship and apprenticeship programs, as well as in creating work opportunities for contractors and sub-contractors in New York City, is the availability of work on publicly funded and assisted projects; and

WHEREAS, the parties to this MOU desire to publicly state their intentions with respect to apprenticeship programs and the creation of contracting and other economic opportunities in the construction industry.

**NOW, THEREFORE**, the City, the BCTC, and the BTEA state as follows:

**1. Scope. This MOU:**

**a. States the intentions of the City, the BCTC, and the BTEA regarding:**

- a. the provision of opportunities in apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors;
- b. the City's application of apprenticeship requirements in City construction contracts from the time of execution through December 31, 2024;
- c. the joint goal of the City, the BCTC, and the BTEA to create employment opportunities, including apprenticeships, in the construction industry; and

**b. Shall terminate on December 31, 2024**

**2. To facilitate the commitments set forth in this MOU, each Local Union shall designate a HireNYC Construction Careers lead representative to work in partnership with the Mayor's Office of Workforce Development ("WKDEV") to implement these workforce and apprenticeship provisions within the union and across City construction contracts.**

**3. The BCTC and the BTEA shall work collaboratively with the City to reserve at least 500 new apprenticeship positions each calendar year through both the general recruitment and direct entry programs for New York City residents living in zip codes where at least 15% of the individuals in such zip code are below the federal poverty rate and NYCHA residents regardless of zip code.**

**4. The BCTC and BTEA shall work collaboratively with the City to reserve new apprenticeship positions each year for direct entry.**

- a. New York State Department of Labor ("NYS DOL") approved Direct Entry programs may be used by sponsors of Registered Apprenticeship programs as another way to bring apprentices into their programs. It is a tool to help sponsors reach underrepresented populations. Direct Entry provides individuals who successfully complete an apprenticeship preparation program, and who meet the minimum requirements for a NYS Registered Apprenticeship program, with the direct opportunity for an interview with the sponsor of a program bypassing the general recruitment scheduled for the Apprentice Programs.**

**5. Apprenticeship programs jointly sponsored by Local Unions and employers affiliated with the BTEA shall, subject to approval by the NYSDOL and to the extent consistent with applicable**

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

consent decrees, court orders or similar mandates, reserve up to the following percentages of their new apprenticeships (some apprentices may be counted in more than one category) for direct entry each year:

- a. 20% for graduates of New York City public high school who have completed pre-apprenticeship training provided by The Edward J. Malloy Initiative for Construction Skills ("C-SKILLS");
  - b. 10% for veterans of the U.S. Armed Forces who are referred by New York City Helmets to Hardhats ("NYC H2H"), provided, however, that any veterans whose qualifications allow them to enter unions as journeypersons shall be counted toward the fulfillment of this percentage;
  - c. 15% for women who have completed pre-apprenticeship training provided by Nontraditional Employment for Women ("NEW");
  - d. 10% for NYCHA and Section 8 residents who have completed pre-apprenticeship training provided by C-SKILLS, NEW, the NYCHA Resident Training Academy ("NRTA"), or Pathways to Apprenticeships ("P2A");
  - e. 10% for justice-involved individuals who have completed pre-apprenticeship training provided by C-SKILLS, NEW, NRTA, or P2A; and
  - f. 5% for qualified employees of certified minority- and women-owned business enterprises and other employers not signatory to collective bargaining agreements of unions affiliated with the BCTC which become signatory to such collective bargaining agreements, provided, however, that any such employees whose qualifications allow them to enter unions as journeypersons shall be counted toward the fulfillment of this percentage.
6. To help reach the goals set forth in paragraph 3, 4, and 5, the City, the BCTC and the BTEA will work cooperatively to identify and pursue appropriate sources of public and private funds and resources, as needed, to provide pre-apprenticeship training scaled to support the goals targeting at least seven hundred (700) pre-apprenticeship positions cumulatively for all above named direct entry programs each year. The City will help coordinate recruitment within the zip codes and target populations identified in paragraphs 3, 4 and 5.
  7. The goals in Paragraphs 3, 4, and 5 are aggregate goals for apprenticeship programs jointly sponsored by the Local Unions and BTEA contractors to achieve on an annual basis through their general recruitments and direct entry programs. The City recognizes that different apprenticeship programs face different circumstances and have varying capacities to meet the percentages set forth in each category; notwithstanding that, the BCTC and the BTEA agree to encourage and support meeting the goals in Paragraphs 3, 4, and 5, and to work with apprenticeship programs jointly sponsored by their affiliated unions and contractors to take affirmative steps to achieve that goal.
  8. The City, BCTC, and BTEA acknowledge that on federally funded projects NYCHA, and the City on certain federally funded projects, must comply with Executive Order 11246

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

and federal regulations contained at 24 CFR Part 135 ("Section 3") regarding efforts to employ residents of NYCHA developments and other Section 3 populations.

9. The City, the BCTC, and the BTEA will jointly seek any necessary waivers from NYSDOL with respect to direct entry goals for the joint apprentice programs, as well as jointly support and encourage 100% participation of all affiliated joint apprentice programs.

### 10. Reporting.

- a. Each Local Union shall provide, or cause to be provided by their Apprentice Directors, copies of the following reports to WKDEV within thirty (30) days of the submission to NYSDOL:

- i. *Apprentice Training Recruitment Notification and Minimum Qualifications (AT 505)* submissions to NYSDOL;
- ii. *Apprentice Training Program Affirmative Action Plan (AT 603)* submissions to NYSDOL; and
- iii. *Apprenticeship Agreement (AT 401)* submissions to NYSDOL.

- b. Pre-apprenticeship programs funded in part by the City will provide quarterly reports, beginning at the end of the first quarter after the first class is held, to the WKDEV with detailed information as required by NYC's Workforce Common Metrics reporting for all individuals trained in all classes.

- c. On an annual basis, beginning on January 1, 2021, the City shall provide an electronic report to the BCTC that contains a list of contracts registered in the previous full fiscal year that were subject to either a City Project Labor Agreement or the Apprenticeship Directive. Such list shall contain the following for each contract:

- i. contracting agency
- ii. contract name;
- iii. prime contractor name;
- iv. registered dollar amount; and
- v. date of registration.

- d. Upon mutual agreement, the parties may modify these reporting requirements, as needed.

11. **City of New York Apprenticeship Directive.** As a means of expanding the pool of work available to apprentices and graduates of state-approved apprenticeship programs providing opportunities to the groups of individuals designated in Paragraphs 3 and 5 above, the City states its intention to implement, as may be amended from time to time, the Directive, attached as Exhibit A. The Directive directs City agencies, for construction contracts where either (i) the cost estimate of the contract exceeds \$3 million, or (ii) the cost estimate of the contract exceeds \$2 million on a project with a cost estimate of at least \$5 million, and for such other contracts as the bidding agency determines to be appropriate, to require the contractor and any of its subcontractors with subcontracts worth at least \$2 million to have apprenticeship agreements appropriate for the type and scope of work to be performed that have been registered with, and approved by, the New York State

2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

Commissioner of Labor, and shall have passed any required probationary period and recertification established by the New York State DOL.

12. The City shall include a statement concerning the applicability of the Directive in every City Record notice of the solicitation or award of a contract for a public works project. Within five (5) days of the issuance of any waiver from the apprenticeship requirement, the City shall notify the BCTC and the BTEA, in writing or electronically, of the granting of such waiver and the reasons therefore.
  
13. The City, the BCTC, and the BTEA look forward to working together and with the contractor community in a spirit of cooperation and good will toward the goal that all New Yorkers from diverse backgrounds, particularly minorities, women, returning veterans, recent public high school graduates, NYCHA residents, individuals in need of economic opportunity, and justice-involved individuals, are well-prepared for participation in the workforce and can gain access to good careers in the construction industry, in both the private and public sectors.

For the City of New York

By: \_\_\_\_\_

First Deputy Mayor, Dean Fuleihan

For Building and Construction Trades Council of Greater New York and Vicinity

By: \_\_\_\_\_

Gary LaBarbera, President

For Building Trades Employers' Association of New York City

By: \_\_\_\_\_

Louis J. Coletti, President & CEO

**SCHEDULE "B" - DRUG AND ALCOHOL POLICY**

**PREAMBLE**

**WHEREAS**, [CONSTRUCTION MANAGER] ("Construction Manager"), for the construction project located at [PROJECT ADDRESS] ("Project") desires to provide for a safe, drug and alcohol-free work site for the Project;

**WHEREAS**, the parties have entered into a separate Project Labor Agreement for the Project and have agreed to negotiate in good faith a Project Drug & Alcohol Testing Policy;

**WHEREAS**, this Testing Policy is collectively negotiated between the Construction Manager and the New York City Building and Construction Trades Council ("Council") (the Construction Manager and BCTC are collectively referred to hereafter as the "Parties");

**WHEREAS**, the Parties each currently have respective drug and alcohol policies, including the Projects' Zero-Tolerance policy;

**WHEREAS**, the Parties desire to maximize project safety conditions for the Project personnel and public, as well as deter violations of the Parties' respective drug and alcohol policies;

**NOW, THEREFORE**, the Parties agree to this Policy as of the date hereof,

**ARTICLE 1 - PARTIES**

This Drug & Alcohol Testing Policy ("Policy") is hereby established by the Construction Manager and the Council, on behalf of itself and its affiliated local union members, and the signatory local unions on behalf of themselves and their members.

**ARTICLE 2-GENERAL CONDITIONS**

**SECTION 2.1 - SUMMARY**

In order to reinforce the Parties' respective drug and alcohol policies, including the Projects' zero tolerance policy regarding the prohibition of the use of drugs and alcohol, and to deter Project personnel from violating those policies, the Parties agree that all Project Personnel (defined later) will be required to submit to drug and/or alcohol testing randomly, post-accident, and for reasonable suspicion.

Any individual on site that violates this Policy is subject to disciplinary action, including, without limitation, loss of site access privileges.

**SECTION 2.2 - REVOCATION OF PROJECT ACCESS PRIVILEGES**

Any one of the following occurrences will result in the immediate revocation of a Project Personnel's project access privileges:

1. An individual is found selling or using drugs or alcohol, or otherwise is under the influence of drugs or alcohol, subject to the other terms of this Policy, on a Project Site;
2. An individual has been convicted under any criminal drug or alcohol statute for a violation occurring in the workplace within the past two years;
3. An individual who refuses to abide by the Projects' drug and alcohol policy, or refuses to submit to a test in accordance with this Policy;
4. An individual who switches, adulterates, or in any way tampers with a specimen

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

required to be submitted in accordance with this Policy.

### **SECTION 2.3 - DEFINITIONS**

Confirmed Positive Test: The presence of drugs, drug metabolites, or alcohol in a person's body that equals or exceeds the established cut off levels as defined in Exhibit I. For drugs, the sample will have undergone Laboratory screening and confirmation testing and must have been verified as positive by a Medical Review Officer. A positive test result for alcohol obtained through Evidential Breath Testing is considered a Confirmed Positive Test.

Employee Assistance Program (EAP): An EAP is generally considered a workplace-based, confidential program designed to help employees deal effectively with a variety of personal problems, and, of relevance to this policy, substance abuse problems. The EAP promotes assessments and short-term counseling. An EAP shall also include any similar education or rehabilitation program provided by the Councilor its respective members. The Project Personnel that are required to participate in the EAP shall be responsible for the cost of their consultation with an EAP and/or participation in any education or rehabilitation program.

Evidential Breath Testing Device (EBT): A device that is used to measure alcohol in the breath and which meets National Highway Traffic Safety Administration's specifications for precision and accuracy.

Laboratory: A laboratory that is SAMHSA (Substance Abuse and Mental Health Services Administration) certified for the testing of drugs.

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by an employer's drug testing plan who has knowledge of substance abuse disorders and medical training to interpret and evaluate a donor's confirmed positive test result together with his/her medical history and all other relevant information.

Previous Worker: All individuals whose employment relationship with the contractor, company or organization no longer exists.

Project Site: The construction area for respective Project.

Reasonable Suspicion: When a qualified trade contractor, the Developer or Construction Manager as set forth in Section 3.7, reasonably believes that an individual has violated this Policy. Reasonable suspicion is based upon (1) specific, current, behavioral or performance indicators, (2) the possible manufacture, distribution, consumption or possession of unauthorized drugs, drug paraphernalia, or alcohol, or (3) documented investigation by an agency retained by, or otherwise independent from, the Developer or Construction Manager.

### **SECTION 2.4 - INCLUDED SUBJECTS**

This Policy shall cover all employees of the Owner, Construction Manager and Project trade contractors, their subcontractors and any other of their respective personnel at any level that are performing any activity at a Project Site, inclusive of managers, superintendents and supervisors, except as specifically excluded by Section 2.5 of this Policy (collectively and singularly, "Project Personnel").

### **SECTION 2.5 - EXCLUDED SUBJECTS**

The following persons are not subject to the provisions of this Policy:

- A. Employees and entities engaged in off-site manufacture, modifications, repair,

## 2020 NYC AGENCY NEW CONSTRUCTION PROJECT LABOR AGREEMENT

- maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery;
- B. Vendors and employees of vendors engaged on a Project Site in equipment testing, inspection, training, warranty work, or engaged in corrections of defective or nonconforming work, unless such employees are expressly included in the bargaining unit of a local signatory to this Agreement;
  - C. Employees engaged in ancillary work on a Project which is performed by third parties, such as electric utilities, gas utilities, telephone companies, and railroads, or any other work not constituting Project work;
  - D. Employees of any governmental authority (state, local or otherwise);
  - E. Employees and contractors engaged in work on the Project Site as part of due diligence or monitoring, which work is ancillary to Project work; and
  - F. Emergency responders.

### **SECTION 2.6 - PRESCRIPTION AND NON-PRESCRIPTION DRUGS**

The use of prescription drugs not prescribed directly to Project Personnel is prohibited, including the use of drugs prescribed to a spouse or domestic partner. The use of non-prescription drugs that are sold outside the United States and that contain substances that are illegal or require a prescription in the United States are prohibited, unless prescribed by a licensed physician.

### **SECTION 2.7 - SEARCHES**

In order for the Construction Manager to ensure the safety of Project Personnel and for the Construction Manager to protect its assets, the Construction Manager shall have the right upon good cause (such as reasonable suspicion of a violation of this Policy) to conduct reasonable searches for alcohol, drugs and related paraphernalia anywhere within the boundaries of a Project Site. A search may include any assets owned or leased by any Project Personnel that is on a Project Site, including without limitation, vehicles, lockers, gang boxes, desks and personal property brought onto a Project Site, but excluding personal body searches or physical contact with employees.

## **ARTICLE 3 - DRUG & ALCOHOL TESTING**

### **SECTION 3.1 - COLLECTION PROCESS**

As of the execution date of this PLA, Project Personnel may be required to submit urine samples ("Preliminary Drug Screening") for the purpose of detecting the presence of drugs as part of the random, post-accident or reasonable suspicion testing, in accordance with chain of custody protocols as established by Substance Abuse and Mental Health Services Administration (SAMHSA), utilizing an instant result test cup for Preliminary Drug Screenings, such testing is to be performed on-site by an independent service provider. The results from the instant result test cup will be considered preliminary. The sample will be sent to a SAMHSA certified testing laboratory for confirmation.

As of the date hereof, all Project Personnel will be required to submit to an Evidential Breath Test (EBT) for the purpose of detecting the presence of alcohol when submitting to random, post-accident or reasonable suspicion testing. Alcohol testing will not be conducted for pre-access testing.

**SECTION 3.2 - NEGATIVE PRELIMINARY DRUG SCREENING**

Project Personnel with a negative Preliminary Drug Screening will be considered conditionally accepted for Project site access, pending confirming laboratory results. Site access privileges will be revoked if the subsequent laboratory results determine that the sample has tested positive for drugs or that the sample has been adulterated.

**SECTION 3.3 POSITIVE PRELIMINARY DRUG SCREENING**

If the Preliminary Drug Screening indicates a positive result, the individual will not be allowed access to the Project Site. The sample will be sent to the certified laboratory for analysis and, if applicable, reviewed by the Medical Review Officer (MRO). If the laboratory confirmation results are also positive, the individual will be considered in violation of this Policy and their site access will be revoked for at least 30 days. If the laboratory confirmation results are negative, the Project Personnel's site access will not be revoked.

**SECTION 3.4 CONFIRMED POSITIVE TEST RESULTS**

**A. POSITIVE DRUG TEST**

A drug test is considered positive if the test results exceed the limits shown in Exhibit 1, which is attached hereto and incorporated herein by reference. The test will be confirmed through a second analysis process and reviewed by an MRO before results are reported. Project Personnel with confirmed positive drug test results will have their site access revoked. In case of a "false positive" result, any such Personnel shall be entitled to the reimbursement of any wages lost during the suspension caused by any such false positive result.

**B. POSITIVE EBT**

An EBT is considered positive if the test results exceed .04 BrAC, or as otherwise set forth in Exhibit 1. Project Personnel with a positive alcohol test result will be subject to the remedies set forth in Exhibit 1.

**C. REINSTATEMENT OF SITE ACCESS PRIVILEGES**

(a) Subject to section 3.4(C)(a) immediately below, if the site access of a Project Personnel has been revoked pursuant to this Policy, then any such person may request that their site access be reinstated after 30 days, provided that all of the following conditions are met to the reasonable satisfaction of the Construction Manager. :

1. The individual has provided proof of wellness from an accredited rehabilitation facility or has provided proof that treatment isn't needed as attested to by a licensed health care provider specializing in the diagnosis and treatment of alcohol and drug abuse.
2. A current drug and alcohol test is obtained within three (3) days of the request for re-access to the site and proof of a negative test result has been received; and
3. The individual agrees to submit to multiple testing for two (2) full years from the date of gaining re-access to the project, the scheduling of which will be determined at the sole discretion of the Construction Manager. If all of these conditions have been met, the Construction Manager agrees that it will not unreasonably withhold their consent to any such request.

(b) Unlawful possession, concealment, use, purchase, sale, manufacture, dispensation or

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distribution of illegal drugs or un-prescribed controlled substances on the Project Site will subject the Project Personnel Employee to immediate removal from the Project Site and shall bar such Project Personnel Employee from returning for a minimum of three (3) months, which return shall, in any event, be subject to the reasonable approval by Construction Manager.

(c) All of the Parties agree that any such Project Personnel will only be entitled to any such reinstatement of site access privileges one time and that any subsequent violation of this Policy will result in the permanent termination of access to the Project Site.

### **SECTION 3.5 - RANDOM TESTING**

A third-party provider designated by the Construction Manager will randomly select by an objective criteria a testing pool for random drug and/or alcohol testing from all Project Personnel with site access cards. Any individual selected for a random drug and/or alcohol test will be required to submit to an Evidential Breath Test (EBT) and/or drug test. Individuals may be tested more than once during any given time period. The Parties acknowledge and agree that an EBT may be required without a drug test and that a drug test may be required without an EBT, as solely determined by the Construction Manager.

If an individual is unable to attend the first scheduled random drug test as a result of being involved in a work-related task, such drug test will be rescheduled and will be completed at or before the conclusion of such employee's then current work shift. If the second drug test is missed for any reason, the incident will be reviewed by the Construction Manager, who shall have the right to terminate the site access privileges of any such Project Personnel until such time as that Project Personnel has complied with this Policy. If the individual refuses to take the test, their access privileges will be immediately terminated for cause.

### **SECTION 3.6 - POST ACCIDENT TESTING**

After each work-related incident or injury requiring the services of a licensed health care provider, all Project Personnel involved with the incident will be required to submit to a drug and/or alcohol test immediately following the incident. In instances where emergency care is necessary, the drug and/or alcohol test shall be obtained by the care facility, if possible, within 24 hours after treatment is rendered. If more than 48 hours have passed before an injury is reported and treated by a licensed health care provider, an alcohol test will not be required.

In addition, any Project Personnel involved in a non-injury related incident at a Project Site with damages at or in excess of \$200 will be required to submit to a drug and/or alcohol test unless:

- A. It is determined, after conducting an investigation and interviewing all employees involved and any witnesses, that the employee's performance can be completely discounted as a contributing factor to the incident; or
- B. It is determined, after conducting an incident investigation and interviewing all employees and any witnesses that the incident was caused by inadequate equipment or system design, and/or premature failure of equipment or system components.

### **SECTION 3.7 - REASONABLE SUSPICION TESTING**

All Project Personnel will be required to submit to a drug and/or alcohol test when there is reasonable suspicion the individual has violated this policy.

Reasonable suspicion includes, without limitation, the following:

- A. Violent or irrational behavior;

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- B. Emotional or physical unsteadiness;
- C. Sensory or motor-skill malfunctions;
- D. Slurred speech;
- E. The odor of alcohol or drugs on clothing or breath in conjunction with other indicators;
- F. Possession of alcohol, unauthorized drugs or drug paraphernalia; or
- G. Documented evidence of an independent investigation regarding Project Personnel's consumption of what is reasonably believed to be an alcoholic beverage or drugs in violation of the Project's policies and/or this Policy.

Reasonable suspicion testing may only be ordered by supervisory personnel that: (a) have been trained to recognize the above referenced factors; or (b) have received credible documentary evidence from an independent investigator that a Project Personnel has violated a drug and/or alcohol policy. It is agreed that any certified training program shall satisfy the training requirement.

### **SECTION 3.8 - PRIVACY CONSIDERATIONS**

The Parties agree to use reasonable efforts to conduct any testing pursuant to this Policy in accordance with the privacy concerns of Project Personnel. To address these concerns, the Parties agree that:

1. The testing station(s) shall be screened off, or otherwise closed off from public view.
2. All documents and information regarding the testing, including test results, shall be maintained by the respective custodian(s) of record in accordance with their respective privacy policies, which any Project Personnel shall be entitled to review upon timely request.
3. The Parties agree to make a good faith effort to resolve any other privacy concern of Project Personnel regarding this Policy, provided that any such concerns do not interfere with the purpose of this Policy.

## **ARTICLE 4 – GRIEVANCE**

### **SECTION 4.1 - REPRESENTED WORKERS**

Nothing in this Policy shall restrict a member of a signatory local union from filing a grievance in accordance with the member's collective bargaining agreement or a Project Labor Agreement, provided that the grievance shall be limited to whether the removal of a member for violation of this Policy was conducted in compliance with the terms and conditions set forth herein.

### **SECTION 4.2 - HOLD HARMLESS**

The Construction Manager agrees to hold harmless and indemnify the Union/Council and its representatives from any liability that may be incurred as a result of the Company's Drug and Alcohol Policy to the extent caused by the negligence or intentional misconduct of the Construction Manager.

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**IN WITNESS WHEREOF** the parties have agreed to this Policy as of \_\_\_\_\_, 20\_\_.

FOR [CONSTRUCTION MANAGER]

By: \_\_\_\_\_

Name: [INSERT NAME] \_\_\_\_\_

Title: [INSERT TITLE] \_\_\_\_\_

FOR GREATER NEW YORK CITY BUILDING TRADES COUNCIL

By: \_\_\_\_\_

Name: Gary LaBarbera \_\_\_\_\_

Title: President

**EXHIBIT 1**

**CLASS OF DRUGS TESTED AND THEIR RESPECTIVE CUT-OFF LIMITS**

The cut-off limits established are those recommended by the U.S. Department of Health and Human Services in their mandatory Guidelines for Federal Workplace Drug Testing Programs.

<u>Drug Class</u>	<u>Screening Cut-Off Limit (ng/ml)</u>	<u>Confirmation Cut-off Limit (ng/ml)</u>
Amphetamines	1000	500
Benzoyllecgonine (Cocaine Metabolite)	300	150
Cannabinoids (THC)	50	15
*Opiates	2000	10
Phencyclidine (PCP)	25	25

Confirmation screening is done by means of GC/MS analysis.

\*The GC/MS confirmation for opiates will be for both codeine and morphine separately. If morphine is equal to or greater than 2,000ng/ml then the GC/MS confirmation analysis for 6-acetylmorphine (6-MAM) is at a cut-off level of 10ng/ml.

Alcohol Screening

All Project Personnel will be required to submit to an EBT under the random, post-accident, and reasonable suspicion test arenas, for the purpose of detecting presence of alcohol. If this test supports a positive result for presence of alcohol, the Project Personnel will be considered in violation of this Policy.

If the results of the EBT are:

1. Above 0.001 BrAC, but at or below 0.020 BrAC, a second test will be conducted within approximately 15 minutes.
  - If the second BrAC test is less than the first BrAC, the results will be deemed negative and the Project Personnel may return to work, if there are no other outstanding issues.
  - If the second BrAC is increasing, but below 0.04 BrAC, the results will be deemed negative, but the Project Personnel will be sent home for the day and the Construction Manager shall be notified. If a Project Personnel is sent home two times within a six-month period pursuant to this Section I, then any such Project Personnel shall be deemed to have tested positive and will be subject to the applicable remedies set forth in Section 2 below.
2. Above 0.02 BrAC, but below 0.06 BrAC, a second test will be conducted after approximately 15 minutes.
  - Notwithstanding anything set forth above to the contrary, a Project Personnel may elect to voluntarily go home for the day instead of taking a second test and the results will

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- be deemed negative, provided that any such Project Personnel may not voluntarily go home more than once within a twelve month period.
- If the second BrAC test is at or below 0.02 BrAC, the results will be deemed negative and the Project Personnel may return to work if there are no other outstanding issues.
  - If the second BrAC test is above 0.020, but below 0.06, the results will be deemed positive, the Project Personnel will be sent home for the day and their site access will be revoked for at least five [5] calendar days and until such time as the Project Personnel has been evaluated by an EAP professional skilled in substance abuse and confirmed fit for duty.
  - Any Project Personnel who is deemed positive two times within two years pursuant to this Section 2 will have their site access privileges terminated and will be entitled to the limited relief set forth in Section 3 .4( c) of the Policy.
3. At or above .06 BrAC, the Project Personnel will have their site access privileges terminated, after which they will be entitled to the limited relief set forth in Section 3.4(C) of the Policy.



**QUEENS SITE PARKING GARAGE**  
**AN EARLY WORKS PROJECT**  
**OF THE NEW YORK CITY DESIGN-BUILD**  
**BOROUGH BASED JAILS PROGRAM**

**DESIGN-BUILD AGREEMENT**

dated as of February 2, 2021

between

**THE CITY OF NEW YORK**

and

**HUNTER ROBERTS CONSTRUCTION GROUP, LLC**

**THE CITY OF NEW YORK,**  
By and through **THE DDC,**

By: *Lorraine Grillo*

Name: Lorraine Grillo

Title: Commissioner

Approved as to Form and  
Certified as to Legal Authority

*Michael Bank*

Acting Corporation Counsel

Date: 12/29/2020

Digitally signed  
by MR,  
DN: cn=MR, o,  
ou,  
email=mr@law  
.nyc.gov, c=US  
Date: 2020.12.29  
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- (b) Promptly (and in any event within ninety days) after the effectiveness of each Insurance Policy, the Design-Builder must deliver to the DDC:
  - (i) a true and complete certified copy of each Project-specific Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements; and
  - (i) evidence of payment (including clear allocation methodology on non-project specific policies) of any premium then due that is acceptable to the DDC.
- (c) Without limiting Sections 1.5(a) and 1.5(b), the Design-Builder must deliver to the DDC a true and complete certified copy of each Insurance Policy applicable to the Work within seven Business Days of receiving a written request from the DDC.
- (d) If the Design-Builder:
  - (i) does not provide the DDC with a certificate of insurance and proof of payment within seven Business Days after receiving a written request from the DDC; or
  - (ii) fails or refuses to obtain or maintain in force the Insurance Policies required by this Exhibit,

the DDC may, without prejudice to any other available remedy and without further inquiry as to whether the Insurance Policy is actually in force, exercise its remedies under Article 35 (*Design-Builder Default*) of this Agreement, for a Design-Builder Default under Section 35.1(n) (*Insurance Default*) of this Agreement.
- (e) The Design-Builder indemnifies the City and the DDC for Losses incurred in connection with any Design-Builder Default under Section 35.1(n) (*Insurance Default*) of this Agreement.
- (f) The DDC may, without obligation or liability, suspend all or any portion of Work during any time that the proofs of coverage, in compliance with this Exhibit, have not been provided as required in this Agreement. If the Work is so suspended, the Design-Builder will not be entitled to claim any Delay Event or Change Order.
- (g) Insurance coverage provided pursuant to this Agreement or otherwise will not relieve the Design-Builder of any liability under this Agreement, nor will it preclude the DDC from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or Applicable Law.

#### 1.6 **Endorsements, Waivers and Additional Requirements**

- (a) Subject to Section 1.6(b), the Design-Builder must ensure, and must cause all Subcontractors, as applicable, to ensure that all Insurance Policies comply with all requirements specified in this Agreement, including the following:
  - (i) any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project will not affect coverage provided to the other named insureds or additional insureds and their respective officials, employees, agents and consultants;

# Principal Participants and Key Personnel Commitment and Statement of Availability

05



# KEY PERSONNEL



Position/Assignment for the Project: Project Executive			
Firm Name:	Hunter Roberts Construction Group, LLC	Years of Experience:	20+
Name:	Sean O'Connor	This Firm:	14
Title:	Senior Vice President	Other Firms:	5
Degree:	B.S., Psychology & B.A., Business Management	Specialization:	Construction Management
Year Earned:	1997 / 1997	Registration:	N/A

As Project Executive, Sean O'Connor is responsible for the overall performance and successful completion of his Clients' projects. He is accountable for the budget, schedule, safety and quality of each project under his control. Sean directs and leads his teams to ensure the day-to-day construction efforts meet and exceed client expectations. He has a proven track record developing projects from pre-construction through occupancy. Sean is a seasoned construction professional with over 20 years of experience. Sean led the team for the design-build Yankee Stadium Parking Facilities. He has extensive experience in pre-construction, new construction, renovations and interior fit-outs and is well known for his strong leadership skills. Sean's market sector experience includes Higher Education, K-12, Interior Renovations, Commercial, Retail, Public Sector and he has led pre-construction teams for multiple projects. Sean has submitted his application for the DBIA Associate Design-Build Professional credential and expects to participate in the October course.

**Yankee Stadium Parking Facilities, Bronx, NY**

Design/build contract for three garages, containing approximately 5,000 parking spaces. Multiple city agency approvals. Contaminated soil removal. Reinforced cast-in-place concrete pile caps set on concrete-filled steel pipe pile foundation. Built and phased around New York Yankees seasons.

**Macombs Dam Park, Bronx, NY**

A 7.5-acre park built atop Parking Garage A at Yankee Stadium. Includes a running track, football/soccer field, grandstand, comfort station, handball courts and basketball courts, concrete planters with green roof assembly, and irrigation and sprinkler systems.

**68-74 Trinity Place, New York, NY**

Demolition of two buildings followed by the construction of a new, 28-story, structural steel, commercial mixed-use building with five floors of public space, multiple floors of mechanical space, and 22 floors of office space for commercial tenants. The building will also contain a parish hall and gymnasium. An elevated walkway, currently spanning Trinity Place between 74 Trinity and the church, will be supported and left on site to be rejoined to the new podium and link the two properties, all built along side the 1, R, and W, subway lines. Scope of the new building calls for an elaborate curtain wall system and high-end interior finishes.

**Fiterman Hall, New York, NY**

A 400,000-SF academic building for BMCC. Includes a first floor art gallery, 54 classrooms, 31 computer laboratories, 20 conference rooms, offices, a library, 12 soundproof music practice rooms, 13 art studios, a choral and ensemble room, and assembly rooms.

**Pier 57, New York, NY**

The 400,000-SF redevelopment of a Landmark pier. Consists of renovations to the existing structure and surrounding property, including marine work to expand public amenities, highway and civil alterations to reconfigure front of building and to provide new walking/bike path, and major alterations to create spaces for tenant and retail spaces. Major infrastructure components include substantial vertical transportation (new stairwells, elevators, and escalators), removal of old and installation of new MEPS systems, public rooftop park, and substantial structural package.

**South Street Seaport Pier 17 Redevelopment, New York, NY**

Transformation of Pier 17 through demolition of existing pier and building. New pier construction with increased open space. Four-story pier building with garden roof, destination stores, restaurants, and neighborhood shops.

**Queens Plaza Tower, Long Island City, NY**

A 48-story, 350,000-SF condominium residential tower with 300 units and amenity spaces. Scope also includes single-story parking garage and retail space with rooftop amenity garden.

**Fulton Market Building, New York, NY**

Gut rehabilitation of existing four-story building decimated by Superstorm Sandy. Installation of drilled mini piles, caps, grade beams, and elevator pits. Removal of existing floor slabs and structural steel, installation of structural steel trusses and slabs, and significant structural reinforcement. New elevators, escalators, exterior storefront, and MEPS systems.

<b>Position/Assignment for the Project:</b>			
<b>Firm Name:</b>	Hunter Roberts Construction Group, LLC	<b>Years of Experience:</b>	21
<b>Name:</b>	Josh Frankel, AIA	<b>This Firm:</b>	3
<b>Title:</b>	Design-Build PM/Design-Build Construction PM	<b>Other Firms:</b>	18
<b>Degree:</b>	M. Arch & B.A., English Literature	<b>Specialization:</b>	CM / Estimating
<b>Year Earned:</b>	1999 / 1994	<b>Registration:</b>	NYS Architecture

As Design-Build Project Manager/Design-Build Construction Project Manager, Joshua Frankel is responsible and accountable to the Design-Build Project Executive and Owner for the overall performance and success of the project. Josh will work closely with the design team to complete a design effort that exceeds the Owner's performance requirements and meets the budget. He will lead the staff in the day-to-day operations including trade procurement, coordination and submittals. Josh acts as the liaison between Hunter Roberts, the subcontractors, the design team and ownership. Josh has dedicated his 21 year career to work in the public realm for healthcare, cultural and education clients. He is a believer in the design-build procurement methodology and has completed the coursework for the Associate Design-Build Professional credential. Josh is an advocate for early and continuous collaboration between the design and construction teams. Virtually all of his projects completed over the last 15 years were executed in highly collaborative team environments - including an IPD- type project with trade management agreements for Northwell Health and an extensive pre-construction assignment for Mount Sinai South Nassau's campus revitalization.

**Northwell West Wing Addition, Manhasset, NY**

Design project manager for a proposed 250,000-SF addition to an existing hospital. Scope includes eight new operating rooms and over 40 critical care beds. Massing and design, including glazed terra cotta panels and curtainwall, was chosen to minimize impact of a large building in a residential neighborhood while maintaining a contemporary brand for Northwell. Construction total \$250 million.

**Museum of the City of New York Renovation & Expansion, New York, NY**

Design project manager for a \$20 million renovation and expansion project that reorganized the gallery and administrative spaces while greatly enhancing the visitor experience..

**Mount Sinai Downtown Beth Israel Hospital, New York, NY**

Design Project manager for a proposed new, 240,000-SF hospital in Lower Manhattan. Scope includes conversion of the ground floor of the existing New York Eye and Ear Care Infirmary into a new emergency department as well as a new tower with five operating rooms, 80 inpatient beds, labs, and administrative spaces.

**NYU Lutheran Medical Center Ambulatory Surgery Center Expansion, Brooklyn, NY**

Design project manager for the expansion of an existing one-story building into a new Ambulatory Surgery Center and Family Health Center. Conversion of the roof and existing HVAC equipment space into interstitial mechanical space and addition of two floors above. The first of the new floors houses the ambulatory surgery area while the upper floor contains the Family Health Center.

**Montefiore Medical Center Children's Hospital Renovation & Expansion, Bronx, NY**

Design project manager for a 300,000-SF expansion and renovation, including obstetrics, neonatal, and pediatrics medicine within a single facility. Located on a corner of the Moses Campus, the expansion requires careful planning to minimize disruptions to critical clinical programs. Total construction cost over \$300 million.

**South Nassau Communities Hospital, Oceanside, NY**

On-call contract four South Nassau Communities Hospital. Includes the following projects: J-Wing Addition / New Central Utility Plant and Electrical Infrastructure Upgrades; Emergency Department Phase II Renovation; Observation Suite; New Parking Garage; Medical Arts Pavilion.

**Lycee Francais de New York, New York, New York**

Design project manager for construction for a 17,000 SF expansion. The new wing, positioned prominently on York Avenue, creates a more public face for the school. The new building provides important new teaching and learning spaces, including new classrooms, offices, study areas, a media lab, a broadcast studio and a maker-space.

**Indiana University Global & International Studies Building, Bloomington, IN**

Design project manager for a new 165,000-SF academic building housing the School of Global and International Studies as well as other language, literature, and culture studies programs. Building includes 10 classrooms, lecture hall, academic offices, and graduate student work space. Design calls for two wings so that each professor's office has a window: the west wing follows the school's arboretum; the east wing follows an existing campus edge. Architectural style bridges between older buildings and Brutalist library, linking the campus together. Construction cost total \$40 million.

Position/Assignment for the Project: Design Integrator			
Firm Name:	Urbahn Architects PLLC	Years of Experience:	19
Name:	Ijeoma Iheanacho, LEED	This Firm:	3
Title:	Project Manager	Other Firms:	16
Degree:	Bachelor of Architecture, Cornell	Specialization:	Architecture
Year Earned:	2001	Registration:	N/A
<p>With nearly 20 years of professional experience, Ijeoma is one of the most industrious architects at Urbahn. Diligent and determined, she takes complete charge of a project's design integration right from the kick-off meeting, up until the project reaches completion. Her work has included transportation facilities, K-12 schools, residential complexes, and urban infrastructure projects. She has consistently applied her dogged approach to design management and integration, resulting in projects that meet client standards and procedures, comply with schedules and budget and achieve performance expectations. She is meticulous about documentation and communication so that all parties understand the status, issues and actions that must be taken to move the project forward and to completion. Ijeoma is conversant with Revit and has managed several projects delivered on that platform.</p> <p>Ijeoma is a proponent of sustainability and progressive social and cultural initiatives. She has been a LEED Accredited Professional since 2009, and is active in several industry organizations.</p> <p><b>Enhanced Station Initiative – Packages 1 &amp; 8</b> As part of Governor Cuomo's initiative to transform New York State's transportation infrastructure into the 21st Century, 31 subway stations were designated for fast-paced modernization on a Design-Build basis. Package 1 included 3 subway stations on Brooklyn's Fourth Avenue Line - 53rd Street, Bay Ridge Avenue, and Prospect Avenue Stations - and was completed in 2017. Following the success of NYCT ESI Package 1, the D-B Team was awarded Package 8, including 145th Street Station in Manhattan, and 167th Street and 174-175th Street Stations in the Bronx. Urbahn was the lead design entity on the D-B Team for Packages 1 and 8, handling the architecture, schedule management and design integration.</p> <p><b>Tides North Residential Complex at Arverne By The Sea, Far Rockaway, NY</b> Urbahn designed two multifamily apartment buildings as part of the Arverne By The Sea complex, an exemplar of sustainable urban development. The 6-acre site was designed to include 454 apartment units, including studios, 1-, 2-, and 3-bed apartments, with a total square footage of 550,000 sf. In addition to the residential units, the complex is designed to include 25,000 sf of retail, a club house and an outdoor swimming pool.</p> <p><b>Accessibility Improvements at Eastern Parkway and 59th Street Stations, Brooklyn, NY</b> Urbahn was engaged by NYCT to provide full design and construction administration services to provide accessibility improvements at two Brooklyn subway stations. Urbahn is responsible for the entire consultant team, including the integration of civil, structural and MEP engineering, as well as lighting design and cost estimating. For each station Urbahn applied and adapted NYCT standard construction assemblies, including elevator equipment and elevator kiosks. Both projects are currently under construction.</p> <p><b>PS 144Q Addition and Renovation, Forest Hills, NY</b> Urbahn is responsible for the planning and design of a major addition, as well as significant renovations to the existing 1931 school. The addition includes four stories housing 24 classrooms from Pre-K through 4th grade, with a subterranean cafeteria and full-service kitchen to serve the entire student population. Our design realigns space within the existing building to complement the full program, while providing voluntary accessibility improvements, as well as life safety, mechanical and electrical upgrades.</p> <p><b>NYCT, World Trade Center Transportation Hub, New York, NY</b> In conjunction and coordination with the development of the replacement World Trade Center, this project involved the reimagining of the subway complex connections and environment. Design development of major design issues, attendance at client and consultant meetings, coordination of production packages, creation of construction drawings and design sketches, coordination with interoffice disciplines, correspondence with manufacturers, documentation and design integration of remaining existing conditions.</p>			

Position/Assignment for the Project: Designer of Record			
Firm Name:	Urbahn Architects PLLC	Years of Experience:	36
Name:	Donald E. Henry, Jr., AIA, LEED, CPHC®	This Firm:	30
Title:	Managing Principal	Other Firms:	6
Degree:	Bachelor of Architecture, NJIT	Specialization:	Architecture
Year Earned:	1980	Registration:	RA - New York & New Jersey
<p>A Principal at Urbahn, Donald Henry is an experienced architect who demands the highest level of performance from all who work for him. While he commonly directs projects with large multi-disciplined staffs, he is very much a hands-on architect, frequently in the studio solving constructibility problems in design, or in the field inspecting construction progress. Throughout his diverse career, Mr. Henry has focused on public infrastructure, justice and public safety facilities, and high security projects.</p> <p>Throughout Donn's career he has focused on environmental design, exploring the potential of renewable energy and use of recycled building materials. His continuing passion for sustainable design led to his early LEED accreditation in 2006. In 2008 he authored the "Green Ordinance" for the Jersey City Building Code, and was recently the recipient of the Jersey City Redevelopment Authority "Green Award" for Sustainability for his leadership in the design and construction of the LEED Silver Public Safety Center. Mr. Henry recently directed the design and construction administration for the Jersey City Municipal Services Complex, which is the first LEED Platinum project built by the city. In addition, Donn recently became a Certified Passive House Consultant.</p> <p>Under Donn's leadership the Bayamon Correctional Medical Center was the recipient of the Team Award from the Healthcare Symposium. Many of Donn's projects have received recognition by industry organizations and media.</p> <p><b>Jersey City Municipal Services Complex, Jersey City, NJ</b> The project transforms a former warehouse site to a multi-building complex, and was envisioned as a Gateway to Jersey City, and has achieved LEED Platinum certification. The project impetus was threefold: a public/private land-partnership to redevelop waterfront necessitated government relocation; the City's facility consolidation program; and its designation as an exemplar of sustainable redevelopment. The complex includes a wide range of vehicular parking, maintenance and repair structures, administrative functions, a police emergency services facility, and community amenities. Role: Principal In Charge, Architect of Record and Project Manager Duration: from Concept Stage to Construction Completion</p> <p><b>Manhattan 6/6A/8 Garage, New York, NY</b> Urbahn was responsible for the planning and design of New York City Department of Sanitation's District 6/6A/8 Garage. Located between the FDR Drive and First Avenue near the East River, Urbahn's design features measures to protect the critical operations and systems within the 500-year flood zone. This 4-story garage houses 171 sanitation vehicles: refuse collection trucks, mechanical sweepers, and 120 employee cars. Working closely with DSNY, Urbahn designed the facility and its semi-transparent façade to be welcomed by the nearby residential, commercial and institutional communities. The project received approval by the NYC Public Design Commission. Role: Principal In Charge, Architect of Record and Project Manager Duration: from Concept Stage to Construction Documents</p> <p><b>District 1 &amp; 3 Sanitation Garage Complex, Staten Island, NY</b> Urbahn's scope of work included a comprehensive functional program of needs, assessment site/building conditions, environmental assessment, and the examination of a range of redevelopment strategies. The former site housed facilities to support the operations of District #3, including a large vehicle garage, a repair shop, a waste drop off area, and outdoor parking for sanitation vehicles that do not fit within the garage and employee vehicles. Based on Urbahn's study, NYCCDC is currently managing the design and construction program. Role: Principal In Charge, Architect of Record Duration: CPSD Study</p>			

**Jersey City Public Safety Center, Jersey City, NJ**

This building serves as the primary communications center for all emergency responders. Located on the second floor is the heart of this 25,000 sf facility: the 9-1-1 call center, a theatre of operations for the police, fire, and EMS departments. There are several critical adjacencies to the main communications theatre, including suites for groups providing research, planning and tactical support. In addition, the core program also called for a ring of support spaces. The design merges high security, anti-attack features, employee amenity, sustainable design, and community design considerations.

Role: Principal In Charge, Architect of Record and Project Manager

Duration: from Concept Stage to Construction Completion

**Federal Detention Center, Brooklyn, NY**

Urbahn designed the 1000-cell Federal Detention Center at Bush Terminal as part of the multi-phase master plan, previously developed by the firm. The new Federal Detention Center building shares a city block with the 500-bed Federal Detention Center designed, gut renovated, and occupied in the first phase of the project.

Role: Project Manager

Duration: from Concept Stage to Construction Completion

Position/Assignment for the Project: Design Architect			
Firm Name:	Marvel Architects, PLLC	Years of Experience:	31
Name:	Guido Hartray, AIA	This Firm:	7
Title:	Founding Partner, Marvel Architects, PLLC	Other Firms:	24
Degree:	Harvard GSD, Master of Architecture	Specialization:	Architectural Design
Year Earned:	1994	Registration:	Registered Architect, NY, NJ

Guido Hartray has worked with Jonathan Marvel since 1997, and is a founding Partner of Marvel Architects. He has led design teams working on a wide range of projects, including creating a streetscape vision of Union Square and integrating park and building for Pierhouse and 1 Hotel in Brooklyn Bridge Park. Under his leadership NJIT created a new campus academic center for the campus in the Central King Building. He has created workspaces that bridge digital and printed media for America Media and the American Physical Society.

Guido is dedicated to creating architecture that contributes to an environment that is greater than the individual project. Whether the context of the intervention is an urban neighborhood, a campus, or an existing building, Guido's design strategy builds from the context to develop designs that transform their surroundings. The dialogue between new and existing, project and neighborhood, infrastructure and architecture makes spaces that engage their inhabitants. Guido was a Fulbright Scholar studying public space in Barcelona and served on Community Board 3 in Manhattan.

**EDUCATION**  
Harvard University, Graduate School of Design, Master of Architecture 1994 Miami University, Ohio, Bachelor of Environmental Design 1989

**PRACTICE**  
Marvel Architects, NY: 2013-Present  
Rogers Marvel Architects, NY 1997-2013  
Museo de Arte Contemporáneo de Barcelona, Spain, 1995-1997  
Curator, Architectural Association, London 1995-1997  
Curator, Coderch's Barceloneta Housing AM Arquitectos, Barcelona, Spain 1996  
Highrise Residential Development in Badalona, Spain, Nagle Hartray & Associates, Chicago 1993  
Pica Ciamarra Associati, Naples, Italy 1989-1990

**Gowanus Green Public Space Master Plan, Brooklyn, NY**  
Gowanus Green incorporates the community's visioning principles and responds to the city's call for a mixed-use extension of the Carroll Gardens neighborhood. The design features six residential buildings with approximately 950 units in a transit-rich location. It provides affordable housing serving a wide range of incomes and needs, including housing dedicated to the formerly homeless, senior and extremely low-income New Yorkers. (Guido Hartray with Marvel Architects)

**Downtown Far Rockaway Housing, Queens, NY**  
In the center of Downtown Far Rockaway in Queens, Marvel has begun an ambitious project to bring 1,700 new affordable housing units to an under-utilized site between the A train terminus and the Long Island Rail Road and create more vibrant, supportive community through socially thoughtful design. (Guido Hartray with Marvel Architects)

**Union Square Streetscape, New York, NY**  
Marvel worked with the Union Square Partnership to envision and plan for the future of Union Square to continue its commitment to public space. As a curator, designer, contributor, and documenter of this process Marvel studied the context and the distinct ways it is used as well as the impacts and opportunities of upcoming infrastructural changes to help achieve USP's goals and those of all of Union Square's visitors, tenants, and residents.  
Guido Hartray with Marvel Architects

**Bedford Courts (Bedford Union Armory), Brooklyn, NY**  
Bedford Courts is a mixed use development located in the Crown Heights neighborhood in Brooklyn, NY. It was formerly known as the Troop C Armory, and was designed in 1903 by Pilcher and Tachau. The project will add units of housing to the site while transforming the existing armory into a community hub. (Guido Hartray with Marvel Architects)

**NJIT Central King Building Renovation, Newark, NJ**

Since 2011, our team has worked with the New Jersey Institute of Technology (NJIT) to complete the renovation of the Newark, NJ Central High School, also called the CKB. Originally opened in 1912, it is a 6-story collegiate gothic building, positioned at the edge of campus. Phased renovation of the historic structure, while maintaining occupancy in part of the building spanned from 2012-2017. The Marvel-led team conducted an exhaustive survey of existing conditions, stabilized the envelope while conducting a complete gut renovation of the interior. All systems were replaced, and the interiors of this former high school were programmed to emphasize collaboration, interaction, and socialization in-between traditional educational scenarios. The complex program includes biology research and instructional labs, flexible classrooms, a 600-seat auditorium, multiple meeting and student support spaces, and an innovation lab. The entire structure and site were reconceived as part of a University master plan, with attractive new entrances on both sides underscoring the importance of this campus-edge building. Completed on time and on budget, this LEED Gold building has been called "Newark's crown jewel" by local press. (Guido Hartray with Marvel Architects)

**Hoboken Cove Community Boat House, Hoboken, NJ**

**The City of Hoboken asked Marvel to design a boathouse and resilience center, with a mandate to include community space and facilities for the local kayaking club. as part of the long-term Rebuild by Design initiative. The community was directly involved from the earliest stages to try and build up the boathouse's potential for use. Currently, the project is pending development of the Rebuild by Design mega-berm that will protect so much of the New Jersey waterfront. When the boathouse gets built, it will have a profound impact on the North Hoboken community fabric. The area has no community center, and Superstorm Sandy showed the need for a local resiliency center. (Guido Hartray with Marvel Architects)**

**Pierhouse at Brooklyn Bridge Park, Brooklyn, NY**

Pierhouse, located in the heart of Brooklyn Bridge Park between Furman Street and the East River, comprises a 106-unit condominium, 300-car below-grade parking garage, 17,000 SF event space, and 195-key hotel within a 620,000 SF complex of connected buildings ranging from four to ten stories. (Guido Hartray with Marvel Architects)

**America Media Offices, New York, NY**

America Media is a 100 year old Jesuit publication which needed a space that would support its evolution into new media while maintaining its distinct perspective. After an extensive site search we identified a space overlooking the media centers of 6th avenue but also a block from St Patricks' Cathedral. The design builds on this location by pulling the enclosed areas to the interior of the floor plate and placing circulation and open work stations on the perimeter so that shared views over the city provide the literal embodiment of America's perspective on world events. (Guido Hartray with Marvel Architects)

**Hudson Square Streetscape Improvement Plan, New York, NY**

Working with Mathews Nielsen Landscape Architecture and Hudson Square Connection, the business improvement district, Marvel analyzed the neighborhood's streetscape to develop short and long-term improvements. While the heavy north-south traffic stood out as a major challenge, it is a characteristic common to many NYC neighborhoods. Our analysis of Hudson Square revealed an equally significant problem effecting the neighborhood's quality of life: a lack of pedestrian and retail activity on the cross streets. To address this challenge we worked with the landscape architects to develop active cross-street landscapes, incentives for pop-up loading dock conversions, and active corners written into the neighborhood's new zoning. (Guido Hartray with Marvel Architects)

Position/Assignment for the Project: Project Safety Representative			
Firm Name:	Hunter Roberts Construction Group, LLC	Years of Experience:	22
Name:	Shane Skennoto	This Firm:	13
Title:	VP, Director of Safety	Other Firms:	9
Degree:	B.S., Occupational Safety and Hygiene Mngmnt	Specialization:	
Year Earned:	1998	Registration:	N/A
<p>Shane Skennoto is responsible for implementing the Hunter Roberts' Corporate Safety, Health, and Environmental Program &amp; Procedures and the approved Project Safety Manual. He supports a variety of projects at the field production level and corporate team to ensure the appropriate integration and timely availability of any needed specialty safety services. He also monitors subcontractors working on behalf of the Hunter Roberts team to guarantee adherence to our corporate safety standards. He is responsible to enforce, encourage and administer all phases of the company-wide and project specific safety, security, environmental protection, and industrial hygiene programs. Shane has documented authorization from Hunter Roberts' senior management to act on behalf of Hunter Roberts in all safety matters including the stoppage of any work when the safety or occupational health of workers is compromised. Shane has over 20 years in the safety industry. Prior to his employment with Hunter Roberts in 2007, he worked as the Senior Health and Safety Specialist for Sunoco, Inc., where he coordinated contractor safety training and verification to meet standards, managed on-site safety equipment vendors for multiple locations, evaluated, and implemented training programs. Shane also managed the night shift safety effort of 20 safety professionals for a \$500 million capital construction project; coordinated the intern program and supported contract administrators with field audits, training, injury follow up, and issue resolution.</p> <p><b>NYCEDC Facilities and Construction Management Retainer Contract, All Boroughs, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: NYCEDC, various subcontractors Lead a team of over forty professional staff, working closely with the Owner on projects from conception through completion. The EDC team provides Construction Management services for projects ranging from feasibility studies and estimates, through small volume short duration projects throughout New York City's five boroughs, to large scale multi-year projects with volumes ranging in the tens of millions.</p> <p><b>Queens Plaza Park, Long Island City, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: Durst Organization, various subcontractors A 950-unit, 1,000,000-SF residential building with a component of the units built as affordable housing. The project site also hosts a half-acre public park, a renovated entrance to the Queens Plaza subway station, and the adaptive reuse of the Landmarked Bank of Manhattan building.</p> <p><b>Garvies Point Phase I, Glen Cove, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: RXR Development, various subcontractors A new mixed-use community located along Hempstead Harbor. Phase I includes three residential buildings, consisting of 959,000 SF total. Two of the buildings each contain five floors of rental units while the third has six floors of condominiums. Amenities for the buildings include a green roof, parking garage and lots, swimming and spa pool, courtyard with fountain, and club house.</p> <p><b>NYPQ EES Separation of Power, Flushing, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: NYPQ, various subcontractors Upgrades and corrections to existing electrical system deficiencies currently present hospital-wide. Primary project objective to provide a new Type 1 Essential Electrical System (EES) to comply with NFPA 99, consisting of three electrical branches, life safety, and critical equipment, backed up with three generators as an emergency power source. Also includes new emergency electrical distribution room to house emergency ATS's and switchgear and seven new fire-protected electrical closets.</p> <p><b>MSK Nassau Regional Cancer Center, Uniondale, NY</b> Project Role: Construction Safety Oversight, Duration: Construction, Firms Involved: MSK, various subcontractors A new 105,000-SF, two-story outpatient treatment facility and pre-cast parking garage providing 450 spaces. Extensive site utility tie-ins. Programming includes radiology, lymphedema, infusion, radiation oncology with three LINACs, laboratory and quick treatment areas, office space, administration space, and public lobby/waiting areas. Targeting LEED certification.</p>			

Position/Assignment for the Project: M/WBE Coordinator			
Firm Name:	Hunter Roberts Construction Group, LLC	Years of Experience:	8
Name:	Krystin Hence	This Firm:	1
Title:	Estimator	Other Firms:	7
Degree:	M.S. City & Regional Planning, B.A. Urban Studies	Specialization:	
Year Earned:	2013/2011	Registration:	N/A
<p>Prior to her role as an Estimator, Krystin was instrumental in implementing NYCEDC's MWBE and ConstructNYC programs, working collaboratively with Construction Managers and NYCEDC's Opportunity MWDBE Group to not only meet contractual participation goals, but to promote a culture that encourages diverse and inclusive approaches to project delivery. As Estimator, Krystin is responsible for estimating construction costs of all building systems and acts as a client liaison during pre-construction. She coordinates between owners, architects, engineers and subcontractors to orchestrate a successful pre-construction product and sets each job up for project excellence. In addition, Krystin works with the operations teams on schedules, logistics, and scopes of work to ensure operational costs are built into the estimate. Krystin has over eight years of experience in the construction industry, largely focused on the design and construction of industrial campuses and waterfront infrastructure. Throughout her varying roles within the industry, Krystin has always found opportunities to serve as champion of disadvantaged businesses in advancement of NYC/NYS goals.</p> <p><b>South Nassau Communities Hospitals - Medical Arts Pavilion, Oceanside, NY</b> Project Role: Estimating Services, Duration: Pre-Construction, Firms Involved: HOK International Estimating Services, Constructibility Review and consultant selection for 15,000 sq ft medical office building and associated parking lot / site-work.</p> <p><b>NYCEDC Capital Program - Brooklyn Bridge Esplanade, New York, NY</b> Project Role: Estimating Services, Duration: Pre-Construction, Firms Involved: NYCEDC, HRCG, Starr Whitehouse Landscape Architects and Planners 1,500 linear feet of waterfront improvements to extend the East River Waterfront. Includes 12-ft walkway along the water, new pedestrian crossings and bike lanes, relocation of existing parking lot, plaza areas, seating and picnic tables, and Brooklyn Bridge viewing deck.</p> <p><b>Made in New York Campus, Brooklyn, NY</b> Project Role: Design and Construction Management, Duration: Design/Pre-Construction/Construction, Firms Involved: NYCEDC, Gilbane, Dewberry Companies Inc., nArchitects Transformation of the historic Bush Terminal into a 200,000-SF garment manufacturing / 160,000-SF light industrial manufacturing hub. Scope included interior renovations and MEPS upgrades, streetscape improvements, and public realm improvements across the nine acres of the campus.</p> <p><b>Brooklyn Army Terminal, Brooklyn, NY</b> Project Role: Design and Construction Management, Duration: Design/Pre-Construction/Construction, Firms Involved: NYCEDC, HRCG, Mancini Duffy, WXY Architecture and Urban Design Renovation of a 100-year-old military facility in Sunset Park, Brooklyn, transforming the campus into 55 acres of light industrial tenant space and public access to the waterfront. Scope included significant interior renovations, structural improvements, and MEPS upgrades to three large warehouse buildings; exterior façade restoration to all exteriors; new ferry shelter and ticketing space; and campus-wide sitework and landscaping improvements.</p> <p><b>New Fulton Fish Market, Bronx, NY</b> Project Role: Design and Construction Management, Duration: Design/Pre-Construction/Construction, Firms Involved: NYCEDC, McKissack &amp; McKissack Managed Capital improvements and on-going maintenance. Scope included installation of trench drains, over 1 million SF of parking lot resurfacing including concrete loading pads, retrofitting of loading docks for cold storage, façade and roof replacement, fire alarm replacement, bathroom renovations, and interior fit-out of office spaces.</p> <p><b>Red Hook Integrated Flood Protection System, Brooklyn, NY</b> Project Role: Project Manager, Duration: Feasibility/Design, Firms Involved: NYCEDC, Dewberry Companies Inc. Coastal protection in response to Hurricane Sandy. Included feasibility study, environmental review, and design.</p> <p><b>New York City Select Bus Service, City-wide, NY</b> Project Role: Project Coordination, Duration: Design/Pre-Construction, Firms Involved: NYCDOT, MTA-NYCT Roadway and streetscape work - including utility relocation, sidewalk reconstruction, and installation of pavement, bus shelters, traffic signals, and signage - for New York City's new rapid bus system.</p>			