



# **CASHLESS TOLLING**

TA 19-1, Contract D800002

## **DESIGN-BUILD CONTRACT DOCUMENTS**

### **PART 1**

### **DB AGREEMENT**

**FINAL February 14, 2019**

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APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

APPENDIX B: STATE PREVAILING WAGE RATES

# DESIGN-BUILD (DB) AGREEMENT

Contract: D\_\_\_\_\_, \_\_\_\_\_, TAS No. \_\_\_\_\_

County(s): \_\_\_\_\_

THIS DB AGREEMENT, entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between by the NEW YORK STATE THRUWAY AUTHORITY, a public corporation of the State of New York (referred to herein as the “Authority”) pursuant to the Infrastructure Investment Act, 2011 N.Y. Laws ch. 56, 2015 N.Y. Laws ch. 60, Part F, 2017 N.Y. Laws Ch. 59 Part RRR the Highway Law and the Public Authorities Law, and

\_\_\_\_\_,

A corporation organized and existing under the laws of the State of \_\_\_\_\_, or

A partnership, consisting of \_\_\_\_\_, or

A Limited Liability Company (LLC), organized and existing under the laws of the State of \_\_\_\_\_, or

A joint venture, consisting of \_\_\_\_\_, or

An individual conducting business as \_\_\_\_\_,

the location of whose principal office is \_\_\_\_\_,

hereinafter called the “Design-Builder,” with reference to the definitions of terms set forth in *Part 2, DB §101*.

WITNESSETH: That on \_\_\_\_\_ (the “RFP Date”) the Authority issued a Request for Proposals for a design-build contract for the [NAME OF PROJECT] (the “Project”); and

WITNESSETH: That on \_\_\_\_\_, 201\_ (the “Proposal Date”), the Authority received \_\_\_\_\_ proposals in response to the RFP, and following evaluation of the proposals, selected the Design-Builder as the best value proposer; and *[blanks to be filled in prior to execution]*

WITNESSETH: That the Authority and the Design-Builder, for the consideration hereinafter named agree as follows:

## **ARTICLE 1 COMPENSATION**

### **ARTICLE 1.1 Contract Price**

As full compensation for the Work, the Authority will pay the Design-Builder a lump sum of \$\_\_\_\_\_, which shall equal the total lump sum proposal price for the Project, as agreed to by the Authority, less the unused portion of the lump sum price for the Design-Build – Force Account Work (Item 800.04000015). See also DB Section 109-9. The Contract Price may be subject to adjustment from time to time by Orders on Contract.

*See* DB Section 101-3 for definitions of Contract, Contract Price, and Work.

## **ARTICLE 2 CONTRACT TIME**

### **ARTICLE 2.1 Notice To Proceed**

The Design-Builder agrees that it will begin the Work herein embraced upon receipt of the Notice To Proceed (NTP), unless the consent of the Authority, in writing, is given to begin at a later date, and that it will prosecute the same so that the Defined Completion Date(s) shown in Article 2.2, if applicable, shall be achieved, and that the Project shall be fully completed on or before the Project Completion Date set forth in Article 2.3, and the Defined Completion Date(s) shall be fully completed on or before the Defined Completion Date(s) set forth in Article 2.4. *See* DB Section 100 General Provisions, Section 101-3 for the definition of Project Completion.

### **ARTICLE 2.2 Project Completion Date and Defined Completion Date(s)**

The Project's Project Completion Date and Defined Completion Date(s) shall be based on the Design-Builder's Proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Authority. The number of calendar days past the NTP is found on the Schedule of Contract Durations Form SCD as part of the Design-Builder's Proposal, which Form SCD is hereby incorporated.

No extension beyond the Project Completion Date and Defined Completion Date(s) fixed by the terms of this Contract shall be effective unless in writing signed by the Authority in accordance with the terms of State Finance Law § 112. Any extension shall be for such time and terms and conditions as shall be fixed by the Authority, which may include the assessment of liquidated damages and a charge for engineering charges associated with Quality Assurance of design and construction activities or other expenses.

Notice of application for such extension shall be filed with the Authority's Project Manager at least 15 days prior to the Project Completion Date and/or the Defined Completion Date(s) fixed by the terms of this Contract.

The Design-Builder shall pay the Authority liquidated damages as provided in Article 15 of this Agreement for failure to achieve Project Completion Date and/or the Defined Completion Dates by the Project Completion Date and/or the Defined Completion Date(s).

### **ARTICLE 2.3 Project Completion Date**

The Project's Completion Date shall be based on the Design-Builder's Proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Authority. The number of calendar days past the NTP is found on the Schedule of Contract Durations Form SCD,

SCD-1 as part of the Design-Builder's Proposal. See DB Section 101 for the definition of "Project Completion".

No extension beyond the Project Completion Date fixed by the terms of this Contract shall be effective unless in writing signed by the Authority. Any extension shall be for such time and terms and conditions as shall be fixed by the Authority, which may include the assessment of liquidated damages and a charge for engineering, inspection, or other expenses.

Notice of application for such extension shall be filed with the Authority's Project Manager at least 15 days prior to the Project Completion Date fixed by the terms of this Contract.

The Design-Builder shall pay the Authority liquidated damages as provided in Article 15 of this Agreement for failure to achieve Project Completion by the Project Completion Date.

**ARTICLE 2.4 Defined Completion Date(s)**

The Project's Defined Completion Date(s) will be calculated based on the Design-Builder's Proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Authority. The number of calendar days past the NTP is found on the schedule of Contract Durations Form SCD, SCD-2, as part of the Design-Builder's Proposal.

No extension beyond the defined Completion Date(s) fixed by the terms of this contract shall be effective unless in writing signed by the Authority in accordance with the terms of State Finance Law § 112. Any extension shall be for such time and terms and conditions as shall be fixed by the Authority, which may include the assessment of liquidated damages and a charge for engineering charges associated with Quality assurance of design and construction activities and/or other expenses.

Notice of application

Design-Builder

To achieve the Defined Completion by the Defined Completion Date(s)

**ARTICLE 2.5 Final Acceptance**

When in the opinion of the Authority's Project Manager the Design-Builder has fully performed the Work under this Contract, the Authority's Project Manager shall recommend to the Authority's Chief Engineer, the Final Acceptance of the Work so completed. If the Executive Director accepts the recommendation of the Authority's Project Manager, he/she shall thereupon by letter notify the Design-Builder of such Final Acceptance, and copies of such Final Acceptance shall be sent to other interested parties.

Final Acceptance shall be final and conclusive except for: defects not readily ascertainable by the Authority; actual or constructive fraud; gross mistakes amounting to fraud; other errors which the Design-Builder knew or should have known about; or the Authority's rights under any Warranty or guarantee. Final Acceptance may be revoked by the Authority at any time prior to the issuance of the final check by the Authority upon the Authority's discovery of such defects, mistakes, fraud, or errors in the Work.

### **ARTICLE 3 WORK TO BE DONE**

The Design-Builder shall furnish all the Materials, appliances, tools, and labor of every kind required, and construct and complete in the most substantial and skillful manner, the design, construction, improvement, or reconstruction of the Project on or before the dates defined above in Article 2 and as specifically identified and shown in the Scope of Work to this Agreement and elsewhere in the Contract Documents.

### **ARTICLE 4 LICENSING**

Any professional services regulated by Articles 145, 147, and 148 of the New York State Education Law to be performed under this Contract shall be performed by a professional licensed in accordance with such articles.

### **ARTICLE 5 DOCUMENTS FORMING THE CONTRACT**

The Contract shall include and incorporate the executed DB Agreement (which includes Appendix A Standard Clauses for New York State Contracts, and Appendix B State Prevailing Wage Rates,; DB Section 100 General Provisions (Part 2 of RFP); the Project Requirements (Part 3 of RFP); the Utility Requirements (Part 4 of RFP); the Special Provisions (Part 5 of RFP); the Directive Plans included in the RFP Plans (Part 6 of RFP); the Engineering Data (Part 7 of RFP); the Special Specifications (Part 8 of RFP); and the Design-Builder's Proposal, including all addenda or appendices thereto (Part 9 of RFP); RFP Addenda (Part 10 of RFP); the Standard Specifications of the New York State Department of Transportation, Sections 200 through 700, in effect as of the Proposal Due Date, except to the extent that they are modified by the Special Provisions (Part 5 of RFP); RFP Instructions to Proposers; any RFP Addenda; any supplemental agreements, amendments, Orders on Contract, Contract modifications, including those made after execution of the Contract; and all provisions required by law to be inserted in the Contract, whether actually inserted or not.

The components of the Contract Documents are intended to be complementary and to describe and provide for a complete Project. The following components of the Contract Documents complement one another in the following declining order of precedence:

- A) Appendix A, Standard Clauses for New York State Contracts;
- B) Appendix B Federal Requirements (including Attachment 1, FHWA Form 1273; Attachment 2, Federal Prevailing Wage Rate; Attachment 3, Goals for Equal Employment Opportunity (EEO) Participation; Attachment 4, Goals for Disadvantaged/Minority/Women's Business Enterprise (D/M/WBE) Participation; and Attachment 5, Supplemental Title VI Provisions (Civil Rights Act)); and Attachment 6, Cargo Preference Act Requirements.
- C) Appendix C State Prevailing Wage Rates;
- D) Appendix D Ensuring Pay Equity by State Contractors;
- E) DB Agreement (other than Appendix A, B, and C);
- F) Parts 3 through 8 of RFP and Part 10 of RFP;
- G) DB Section 100 General Provisions (Part 2 of RFP);



- H) The Standard Specifications of the New York State Department of Transportation, current on the Proposal Due Date, Sections 200 through 700;
- I) The RFP Instructions to Proposers; any other RFP Addenda; and
- J) Design-Builder's Proposal, including all addenda or appendices thereto (Part 9) (except as provided below).

However, where the Design-Builder's Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and the Authority has accepted the proposed change to the Work and products to that of a higher quality, the Design-Builder's Proposal will take precedence for that specific higher quality Work and products, as applicable. Additionally, subject to Part 2, DB Section 100 General Provisions, DB Section 104-4.6, where the Design-Builder's Proposal includes an approved Alternative Technical Concept, the Design-Builder's Proposal (including the approved Alternative Technical Concept) will take precedence for that specific Work that is the subject of the approved Alternative Technical Concept.

#### **ARTICLE 6 MINORITY AND WOMEN BUSINESS ENTERPRISE GOALS AND SERVICE DISABLED VETERANS OWNED BUSINESS GOALS**

This Contract is subject to State provisions (including State Executive Law 15-A and 5 NYCRR Parts 140-145) concerning the utilization of Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) (collectively M/WBE). All State M/WBE requirements are applicable to this Contract. The approved overall combined MBE and WBE participation goal for the Project is established at 20% of the Contract Price.

This Contract is subject to State provisions (including State Executive Law 15-A and 5 NYCRR Parts 140-145) concerning the utilization of Service Disabled Veterans Owned Business (SDVOB). All State SDVOB requirements are applicable to this Contract. The approved overall SDVOB participation goal for the Project is established at 0.5% of the Contract Price.

#### **ARTICLE 7 EXAMINATION OF DOCUMENTS AND SITE**

The Design-Builder warrants and represents that before submitting its Proposal it carefully examined the Contract Documents and the Sites of the proposed Work and its surrounding territory. The Design-Builder further agrees it is informed regarding all of the conditions affecting the Work to be done and labor and Materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the Site, and that its information was secured by personal and other investigation and research.

#### **ARTICLE 8 ALTERATIONS AND OMISSIONS**

The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the Authority other than the consideration named in this Contract.

The Authority reserves the right, at any time during the progress of the Work, to alter the scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest. This right includes making allowances for additions and deductions, with compensation made in

accordance with the Contract Documents for the altered or omitted Work, without constituting grounds for any claim by the Design-Builder for allowance for damages or for loss of anticipated profits.

Design-Builder acknowledges and agrees that constraints set forth in the Environmental Approvals and other Contract Documents, as well as the Site conditions and planned ROW limits, will impact the design process and the Design-Builder's ability to make changes in the Basic Project Configuration.

## **ARTICLE 9 PERIODIC PAYMENTS**

The Design-Builder Agrees to terms for Periodic Payments described in Part 2 DB Sections 109-6 - 109-6.4.

### **ARTICLE 9.1 No Periodic Payment on Design-Builder's Non-Compliance**

The Design-Builder Agrees to the terms for No Periodic Payment on Design-Builder's Non-Compliance described in Part 2, DB Section 109-5.4

### **ARTICLE 9.2 Final Payment**

The Design-Builder Agrees to the terms for final agreement described in Part 2, DB Section 109-12.2 and Final Payment described in Part 2, DB Section 109-13.

## **ARTICLE 10 RIGHT TO SUSPEND WORK AND CANCEL CONTRACT**

### **Article 10.1 General Right to Suspend and Cancel Contract**

It is further mutually agreed that if at any time during the prosecution of the Work the Executive Director of the Authority shall determine that the Work is not being performed in accordance with the Contract or for the best interest of the Authority, the Executive Director may proceed in any of the following ways:

- 1) Temporarily suspend the execution of the Work by the Design-Builder, and the Executive Director of the Authority may then proceed with the Work under his/her own direction in such manner as will accord with the Contract Documents and be for the best interests of the Authority; or
- 2) Terminate the Design-Builder's Contract while it is in progress, and thereupon proceed with the Work by a new contract negotiated or publicly advertised, by the use of his/her own forces, by calling upon the Surety to complete the Work in accordance with the Contract Documents, or by a combination of any such methods; or
- 3) Cancel the Contract and re-advertise and re-procure in accordance with applicable law; or
- 4) Complete the Work under the Authority's direction in such a manner as will accord with the Contract Documents and be for the interests of the Authority.

Any excess in the cost of completing the Contract beyond the Contract Price for which it was originally awarded shall be charged to and paid by the Design-Builder failing to perform the Work or its Surety, all pursuant to the provisions of Section 40 of the New York State Highway Law.

In the event of suspension or termination, the Design-Builder shall be paid its costs, including contract close-out costs, and profit on work satisfactorily performed and project design costs actually incurred up to the time of termination, less an amount necessary to satisfy any claims, liens or judgments against the Design-Builder. The Design-Builder shall promptly submit its termination claim. The Design-Builder will only be paid the contract price for materials delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract, less an amount necessary to satisfy any claims, liens or judgments against the Design-Builder.

Whenever the Authority determines to suspend or stop Work under this Contract, a written notice sent by mail to the Design-Builder at its address and to its Sureties at their respective addresses shall be sufficient notice of its action in the premises.

### **Article 10.2 Termination for Cause**

If the Executive Director shall determine that the work upon the Contract is not being performed according to the Contract, he/she may terminate the Contract and proceed with the Contract Work by a contract negotiated or publicly let, or by the use of the Authority's own forces, or by calling upon the Surety to complete the work in accordance with the plans and specifications, or by a combination of any such methods; or, he/she may cancel the Contract and either re-advertise and re-let as provided in law, or complete the work under his/her own direction in such manner as will accord with the Contract specifications and be for the best interests of the Authority. Any excess in the cost of completing the Contract beyond the price for which it was originally awarded shall be charged to and paid by the Design-Builder failing to perform the work or by the Design-Builder's Surety, pursuant to the terms and conditions of the bonds. See *Part 2, DB §105-10* regarding the Design-Builder's and Surety's right to receive notice and opportunity to cure prior to termination of the Contract for failure to perform the Work according to the Contract.

### **Article 10.3 Termination for Convenience**

- A. The Authority, at any time, may terminate the Contract in whole or in part. Any such termination shall be effected by delivering to the Design-Builder a written notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Design-Builder shall act promptly to minimize the expenses resulting from the termination.
- B. The Authority shall pay the Design-Builder for Work of the Contract performed by the Design-Builder and accepted by the Authority for the period extending from the end of the period covered by the last approved Application for Payment up to the effective date of the termination, an amount determined in accordance with *Part 2, DB §105-7*. In no event shall the Design-Builder be entitled to compensation in excess of the total consideration of the Contract. In no event shall the Design-Builder be entitled to overhead or profit on the Work not performed.

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

The Authority also has the right to suspend the execution of the Work for convenience and/or to terminate the Contract for convenience. See *Part 2, DB §109-15.2* regarding Orders on Contract for suspensions for convenience ordered by the Authority's Project Manager.

#### **Article 10.4 Termination for Vendor Responsibility**

1. The Design-Builder shall at all times during the Contract term remain responsible. The Design-Builder agrees, if requested by the Authority, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. The Authority, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Design-Builder. In the event of such suspension, the Design-Builder will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Design-Builder must comply with the terms of the suspension order. Contract activity may resume at such time as the Authority issues a written notice authorizing a resumption of performance under the Contract.
3. Upon written notice to the Design-Builder, and a reasonable opportunity to be heard with appropriate Authority officials or staff, the Contract may be terminated by the Executive Director of the Authority or his or her designee at the Design-Builder's expense where the Design-Builder is determined to be non-responsible. In such event, the Authority may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
4. The Authority may require at any time the removal of a subcontractor to the Design-Builder that the Authority determines is not responsible.

#### **ARTICLE 11. DETERMINATION AS TO VARIANCES**

In any case of any ambiguity in the Contract Documents or between any of the various Parts of the Contract Documents, the matter must be immediately submitted to the Project Manager, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties. See Article 5 of this agreement regarding order of precedence of the Contract Documents.

#### **ARTICLE 12 SUCCESSORS AND ASSIGNS**

This Contract shall bind the successors, assigns, and representatives of the parties hereto.

**ARTICLE 13 PROJECT ORGANIZATION**

**ARTICLE 13.1 Authority's Project Organization**

The following information is the contact information for the Authority's Project Manager. The Authority's Project Manager will serve as the main point of contact for the Design-Builder. All notices shall be sent to the Authority's Project Manager at the following address:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

In addition, copies of all notices regarding nonpayment, suspension, disputes, termination and default shall be delivered to the Authority's General Counsel at the following address (or to such other address as may from time to time be specified in writing by the Authority):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email: \_\_\_\_\_

**ARTICLE 13.2 Design-Builder's Project Organization**

The following information is the contact information for the Design-Builder's Project Manager. The Design-Builder's Project Manager will serve as the main point of contact for the Authority. All notices should be sent to the Design-Builder's Project Manager at the following address:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

**ARTICLE 13.3 Written Notices.**

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - (a) via certified or registered United States mail, return receipt requested;
  - (b) by facsimile transmission;
  - (c) by personal delivery;
  - (d) by expedited delivery service; or
  - (e) by e-mail.

Such notices shall be addressed to the individuals or titles named in the Contract documents, or which are designated by the Design-Builder or the Authority at the pre-construction meeting, or

which are designated by the Authority or the Design-Builder from time to time during the course of the Contract pursuant to Paragraph 3 herein.

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

## **ARTICLE 14. INSURANCE**

### **ARTICLE 14.1 General Conditions**

The Design-Builder shall procure and maintain insurance of the kinds and in the amounts specified herein, covering all Work under this Contract, whether performed by the Design-Builder or its Subcontractors, as specified in this Article 14. Except as otherwise expressly provided in Article 14.2, all such insurance shall be in place prior to commencement of Work under this Contract, and maintained until this Contract is completed and the Authority has accepted all Work performed hereunder. Insurance covering the re-performance of any Work during the Warranty Period will be governed by the Thruway Authority Standard Insurance Limits for Construction Contracts (TAP-525).

- 1) All insurance required by this Contract shall be obtained at the sole cost and expense of the Design-Builder.
- 2) All insurance required by this Contract shall be maintained with insurance carriers licensed, or authorized as excess or surplus lines, to do business in New York State, with an A.M. Best Company rating of "A-" or better, with a Financial Size Category of XII or higher and otherwise acceptable to the Authority.
- 3) All insurance required by this Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.
- 4) The Design-Builder shall require that all Subcontractors carry Workers' Compensation, Disability Benefits and Commercial General Liability insurances in accordance with Article 14.2. The limits under the Commercial General Liability policy shall be commensurate with the work performed by the Subcontractor. The Design Builder May at their discretion impose additional insurance requirements on the Subcontractor as applicable. Certificates of insurance showing the Subcontractor's

compliance with the insurance requirements shall be collected and maintained by the Design-Builder and will be furnished to the Authority upon request.

- 5) The Design-Builder shall furnish the Authority with certificate(s) of insurance complying with the requirements set forth in Article 14.1(16) below. The Design-Builder shall furnish the Authority with a sample copy of each endorsement required herein within 10 days following execution of this Agreement and a copy of each such endorsement within 10 days of issuance thereof. For work to be performed within New York State, proof of Workers' Compensation and Disability Benefits Insurance shall be submitted on the appropriate forms as listed in Article 14.2 below. At least seven days prior to the expiration of any policy required by this Contract, the Design-Builder shall promptly deliver to the Authority a certificate or certificates of insurance with respect to each renewal of such policy or policies.
- 6) All policies, by specific endorsement, shall provide for written notice to the Authority no less than 30 days prior to the suspension, voiding, cancellation, material change or nonrenewal of any insurance policies referred to therein, except for non-payment of premium, in which case 10 days' notice shall be required. Any such notice shall be delivered to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.
- 7) If insurance policies utilized contain deductibles, they must be declared as such with applicable levels on the Certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. Any such deductibles shall be commercially reasonable for companies similar to the Design-Builder with respect to net asset value and scope of business. Deductibles shall not be applied against the Authority. Insurance policies with deductibles in excess of \$1,000,000 will require review and approval by the Authority. Additional security or other requirements may be imposed at the sole discretion of the Authority. If, at any time during the term of the Contract, the Authority, in its sole discretion, determines that the Design-Builder is not paying any of its deductibles or self-insured retentions, the Authority may require the Design-Builder to provide collateral securing its obligation to pay all or any part of the deductible or self-insured retention on any or all policies of insurance or, if Design-Builder fails to provide such collateral, to withhold from payments due the Design-Builder such amount as the Authority deems appropriate to cover such deductibles or self-insured retentions.
- 8) Insurance policies with Self-Insured Retentions (SIRs) of up to \$1,000,000 will generally be accepted when the SIR program is administered by a third party administrator and a complete description of the program is provided to the Authority. SIR programs in excess of \$1,000,000 must receive prior approval and may be required to meet additional security requirements. The Authority, at its sole discretion, reserves the right to require the Design-Builder to provide additional collateral or to reject the use of an SIR by the Design-Builder. The Design-Builder will be solely responsible for all claims expenses and loss payments within the retention limit.

- 9) The Design-Builder shall provide certified copies of all declarations pages or of the insurance policies themselves, upon request by the Authority, within 20 days of such request.
- 10) Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority's insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Design-Builder's obligation to maintain such insurance.
- 11) At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Authority than the expiring policies shall be delivered to the Authority in the manner required for service of notice in Article 14.1(5) above.
- 12) If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Agreement or proof thereof is not provided to the Authority, the Design-Builder's right to proceed with the Work shall immediately cease. The Design-Builder shall not resume Work on the Project until authorized to do so by the Authority. Any delay, time lost, or additional cost incurred as a result of the Design-Builder not having insurance required by the Contract or not providing proof of same in a form acceptable to the Authority shall not give rise to a delay claim or any other claim against the Authority. Should the Design-Builder fail to provide or maintain any insurance required by this Contract, or fail to provide proof thereof to the Authority in accordance with this Contract, the Authority may, in its sole discretion: (a) withhold further Contract payments; (b) treat such failure as a breach or default of the Contract for which remedies include the right to terminate the Contract; (c) after providing written notice to the Design-Builder, require the Surety, if any, to secure appropriate coverage; and/or (d) purchase insurance complying with the Contract and reduce the Contract Price by the amount paid for such insurance plus any administrative costs incurred by the Authority in obtaining the insurance.
- 13) By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect the Design-Builder, and such coverages and limits shall not be deemed a limitation on the Design-Builder's liability under the indemnities granted to the Authority under any provision of this Contract.
- 14) The Design-Builder and its Subcontractors shall waive all rights against the Authority and its agents, officers, directors, and employees, for the recovery of damages to the extent these damages are covered by the CGL, Business Auto, Excess, Marine Protection & Indemnity, and Environmental policies, as required.
- 15) The Design-Builder shall provide a copy of these insurance requirements to its insurance producer(s) and insurance carrier(s).



- 16) Each certificate of insurance shall state the identity of all carriers, the identity of the named insureds, the type of coverage, the description of policy limits, the deductibles, the other essential policy terms, and a statement of non-cancellation, and shall:
  - a. Be on ACORD Form 25 accompanied by the Authority Supplemental Insurance Certificate (Form TA-W51343-9), for each insurance carrier involved.
  - b. Be signed by an authorized representative of the insurance carrier or producer.
  - c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Agreement.
  - d. Specify the Additional Insureds and Named Insureds as required herein.
  - e. Refer to this Contract by number on the face of the certificate, and
  - f. Expressly reference the inclusion of all required endorsements.
  
- 17) The following requirements apply to policies required to be provided by the Design-Builder:
  - a. Policies required under Articles 14.2(A), (B), (F), (I) and (J) shall name the Authority, the State and their respective employees, agents, and consultants, any municipality in which the Work is being performed, and any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work as additional insureds. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85 or a form(s) that provides equivalent coverage.
  - b. Policies required under Articles 14.2(A), (B), (F), (G), (I) and (J) shall include a waiver of any right of subrogation against the additional insureds and their respective members, directors, officers, employees, agents, and consultants. The Design-Builder waives any right of action it and/or its insurance carrier might have against the Authority (including its employees, Board members or agents) for any loss, whether or not such loss is insured.
  - c. Policies required under Article 14.2, except Professional Liability/Errors & Omissions, shall provide coverage on an “occurrence” basis, not a “claims made” basis.

**ARTICLE 14.2 Coverages and Limits.** The specific types and amounts of insurance that the Design-Builder must provide pursuant to this Contract are as follows:

- A. Commercial General Liability Insurance --- The Design-Builder shall maintain through a combination of Commercial General Liability (CGL) and Commercial Umbrella Liability insurance, with no less than the following limits and coverages:

Each Occurrence Limit:	\$25,000,000
General Aggregate:	\$25,000,000
Products/Completed Operations Aggregate:	\$25,000,000
Personal/Advertising Injury Liability:	\$25,000,000
Fire Damage Legal Liability:	\$100,000
Medical Expense:	\$5,000

CGL Insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability. Such coverage shall be written on ISO Form CG 00 01 01 96 or a policy form providing equivalent coverage.

Where Work will be performed by unregistered off-road equipment, the Design-Builder shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short- term pollution events, using ISO form CG 04 33 10 01 or its equivalent.

Explosion, Collapse and Underground Hazards coverage (XCU) is required.

If the activity involves construction or demolition within 50 feet of railroad stations, yards, or tracks, the CGL policy must be endorsed to delete the exclusion of coverage for work done within 50 feet of railroad property.

The General Aggregate shall apply separately to the subject matter (Project) of the Contract, and the Design-Builder shall provide an appropriate Project Endorsement, using ISO Form CG 25 03 11 85 or its equivalent, to the Authority for this purpose.

- B. Commercial Umbrella and/or Excess Liability Insurance --- When the limits of the CGL and Auto policies procured are insufficient to meet the limits specified, the Design-Builder shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary policies. Any insurance maintained by the Authority or any additional insured shall be considered excess of and shall not contribute to any other insurance procured and maintained by the Design-Builder including primary, umbrella and excess liability regardless of the “other insurance” clause contained in either parties policy.
  
- C. Owners/Contractors Protective Liability Insurance --- The Design-Builder shall obtain a separate Owners/Contractors Protective Liability (“OCP”) Policy written on Form CG 00 09 12 07, Owners and Contractors Protective Liability Coverage form – Coverage for Operations of the Designated Contractor.

The policy shall be written on a project basis for the benefit of the Authority, its officers, agents, and employees, and the People of the State of New York, with respect to all operations under this Agreement by the Design-Builder or its subcontractors, including in such coverage any omissions and supervisory acts of the Authority, its officers, agents, and employees.

The Authority shall be the named insured in the OCP Policy, which shall be promptly furnished to the Authority. OCP policy limits shall be no less than: **\$2,000,000** per occurrence/**\$2,000,000** aggregate.

D. Builders' Risk Insurance --- The Design-Builder shall provide a Builders' Risk Insurance policy covering all risks in completed value form. Such policy shall cover the total value of the work performed, as well as the value of any equipment, supplies, and/or material for the Project that may be in storage (on or off the site) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of the State held in their care, custody and/or control. Such policy shall name as insureds the Authority, and the Design-Builder. The Builders' Risk policy shall contain endorsements that provide for the following:

- 1) The Authority and the Design-Builder shall be named as loss payee for the Work in order of precedence as their interest may appear;
- 2) In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance Company; and
- 3) In the event that the insurance policy has been issued by a mutual insurance company, the following language shall be included: the "Authority is not liable for any premium or assessment under this policy of insurance. The First Named Insured is solely liable therefore."

E. Professional Liability/Errors and Omissions --- The Design-Builder shall maintain Professional Liability or Errors and Omission Insurance with coverage limits of no less than **\$5,000,000**. (*Applicable to professional services requiring the signature, stamp, or certification of a licensed professional, including, without limitation, erection plans, demolition plans, containment plans, coffer dams, and temporary sheeting.*) The Professional and any professional sub-consultant retained by the Professional to work on the Project shall procure and maintain during and for a period of 3 years after completion of this Project, Professional Liability Insurance in the required amount issued to and covering damage for liability imposed on the Professional by contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required. The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to 3 years after work is completed if coverage is cancelled or not renewed.

If applicable, the Professional shall provide coverage of the Professional's negligent act, error or omission in rendering or failing to render professional services required arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

F. Railroad Protective Liability Insurance --- In the event that any work is to be performed on or within 50 ft. of railroad property or railroad right-of-way, the Design-Builder shall provide and

maintain a Railroad Protective Liability (“RRP”) Policy in the amounts required by the respective railroad.

- 1) The policy must name the railroad as the named insured. No additional insureds will be listed on the policy (see requirements for the deletion of the 50’ Railroad Exclusion on the Commercial General Liability policy).
- 2) Evidence of Railroad Protective Liability Insurance must be provided on the ACORD 25 insurance certificate form, a detailed Binder pending issuance of the policy, or on an ISO-RIMA or equivalent form approved by the railroad and meet any other requirements as specified by the railroad and/or the Authority.
- 3) Definition of “physical damage to property” must be amended to mean direct and accidental loss of or damage to *“all property of any Named Insured and all property in any Named Insured’s care, custody or control”*.

- G. Business Auto Liability Insurance --- The Design-Builder shall maintain Business Automobile Liability coverage, with no less than a **\$5,000,000** Combined Single Limit, which shall cover liability arising out of the Design-Builder’s use of any motor vehicle, whether owned, leased, hired, or non-owned.

If the Contract involves removing hazardous waste from the Project site, or the Project involves environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (ISO Form CA 99 48 03 06) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

- H. Workers’ Compensation Insurance --- For work to be performed in New York State, the Design-Builder shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Workers’ Compensation Law.

Evidence of Workers’ Compensation coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:

- 1) C-105.2 – Certificate of Workers’ Compensation Insurance.
- 2) U-26.3 – Certificate of Workers’ Compensation Insurance from the State Insurance Fund.
- 3) GSI-105/SI-12 – Certificate of Workers’ Compensation Self Insurance.

All forms are valid for 1 year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

- I. NYS Disability Benefits Insurance --- For work to be performed in the State, the Design-Builder shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Disability Benefits Law.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- 18) DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
  - 19) DB-155 – Certificate of Disability Self Insurance.
  - 20) CE-200 – Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits.)
- J. Environmental Liability --- If the work involves abatement, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous material or substance including asbestos, lead and those defined by applicable State and federal laws and regulations, the Design-Builder shall procure, or otherwise obtain and maintain in full force and effect throughout the term of a contract, and for 2 years after completion hereof, pollution legal liability insurance with limits of not less than **\$5,000,000**, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Authority arising from the Design-Builder's work. The Authority shall be named as additional insured and coverage shall be primary.

### **ARTICLE 14.3 Lack of Insurance**

If in any instance the Design-Builder has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining the Design-Builder's liability and the limits thereon or determining reductions in compensation due from the Authority to the Design-Builder on account of available insurance, the Design-Builder shall be treated as though it elected to self-insure up to the full amount of insurance coverage which would have been available had the Design-Builder performed such obligations and such failure had not occurred. If the Design-Builder is deemed to self-insure a claim or loss under this Article 14.3, then the Design-Builder's waiver of subrogation under Article 14.1(17)(b) shall apply as though it carried the required insurance.

### **ARTICLE 15 LIQUIDATED DAMAGES**

**TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT, AND IT IS IMPORTANT THAT THE WORK BE PURSUED VIGOROUSLY TO COMPLETION. THE PUBLIC IS SUBJECT TO DETRIMENT AND INCONVENIENCE WHEN FULL USE OF INFRASTRUCTURE CANNOT BE MADE BECAUSE OF DELAY IN COMPLETION OF THE PROJECT OR PORTION THEREOF, OR WHEN CLOSURES OCCUR. THE**

**AUTHORITY IS SUBJECT TO LOSS OF TOLL REVENUES AND/OR ADDITIONAL ADMINISTRATIVE COSTS FOR MAINTENANCE, ENGINEERING, QUALITY ASSURANCE OVERSIGHT AND POSSIBLY INSPECTION WHEN (A) COMPLETION OF THE PROJECT OR PORTION THEREOF IS DELAYED, (B) CLOSURES OCCUR OR (C) THE WORK OTHERWISE INTERFERES WITH THE AUTHORITY'S ABILITY TO COLLECT CASH OR ELECTRONIC TOLLS.**

Should the Design-Builder fail to complete the Work within the time frame set forth in Article 2 of the Agreement, or as described in a subsequent Order(s) on Contract, the Authority may assess liquidated damages for each calendar day, or any portion thereof, that any work remains uncompleted by the AETC Completion Date and/or Project Completion Date.

Subject to the limitations specified in this Article 15, liquidated damages for delay in completion of the Work and achievement of interim milestones shall be assessed at the following rates:

- 1) \$125,000 per day for failure to achieve AETC Completion by the AETC Completion Date.
- 2) \$20,000 per day for failure to achieve Project Completion by **August 4, 2021**.

Design-Builder acknowledges and agrees that the liquidated damages are intended to constitute compensation solely for Design-Builder's failure to meet the deadline and obligations described in Article 2 of this Agreement, and shall not excuse Design-Builder from liability for any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. Due account shall be taken of any adjustment of the Contract Time for completion of the Work as provided for elsewhere in the Contract Documents. It is understood and agreed by Design-Builder that liquidated damages payable in accordance with this Article 15 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this Contract. Additional terms and conditions with respect to liquidated damages payable by Design-Builder are set forth in *Part 2, §108-5 - Liquidated Damages*.

The fact that the Authority has agreed to accept liquidated damages as compensation for its damages associated with any delay in meeting the Contract Deadlines shall not preclude Authority from exercising its other rights and remedies respecting the delay other than the right to collect damages due to the delay.

If the Design-Builder shall abandon performance of the Work before achieving AETC Completion and/or Project Completion, the Contractor agrees to pay to the Authority for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of abandonment and the date specified for AETC Completion and/or Project Completion that the Work has not achieved AETC Completion and/or Project Completion. The obligation of the Design-Builder to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract.

If the Authority does not terminate the Contract, the damages shall consist of liquidated damages, if any, until the AETC Completion Date and/or Project Completion Date.

If the Authority terminates the Contract before the Design-Builder achieves AETC Completion and/or Project Completion, the Design-Builder agrees to pay to the Authority for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day after both the date of termination of the Contract and the date specified for Project Completion that the Work has not achieved AETC Completion and/or Project Completion. The obligation of the Design-Builder to pay liquidated damages as provided in this paragraph shall survive the termination of the Contract.

The foregoing liquidated damages are intended to compensate the Owner only for the loss of beneficial use of the Work of the Contract. In addition, the Design-Builder shall be liable to the Authority, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Authority may incur as a result of any actions or inactions of the Design-Builder or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to other contractors working on the Project or other third parties, job extension costs, and other losses incurred by the Authority. The provisions of this paragraph are for the exclusive use of the Authority, and shall not accrue to other contractors or other third parties. The Design-Builder shall be liable to the Authority in accordance with Part 2, § 107-27.

The Design-Builder agrees to the liquidated damages provisions in Contract Document, Part 5 – Special Provisions, SP-6, and Contract Document, Part 2, DB Section 108-5.

#### **ARTICLE 16 INDEPENDENT CONTRACTOR.**

The Design-Builder Agrees to the terms as an Independent Contractor described in Part 2, DB Section 107-1(b).

#### **ARTICLE 17 ETHICS, CONFIDENTIALITY AND REQUIRED CERTIFICATIONS**

##### **ARTICLE 17.1 Ethics**

During the term of this Agreement, Design-Builder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the Authority or the State to perform services in violation of: the provisions of the New York State Public Officers Law, other laws applicable to the service of current or former Authority or New York State employees, and/or the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics or its predecessors (collectively, “Ethics Provisions”). Design-Builder certifies that all of its employees and those of its Subcontractors who are former employees of the Authority or the State and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Provisions. Further, during the term of this Agreement, no person who is employed by Design-Builder or its Subcontractors and who is disqualified from providing services under this Agreement pursuant to any Ethics Provision may share in any net revenues Design-Builder or its Subcontractors derives from this Agreement.

Design-Builder shall identify and provide the Authority with notice of those employees of Design-Builder or its Subcontractors who are former employees of the Authority or the State and will be assigned to perform services under this Agreement. The Authority may request that Design-Builder provide it with whatever information Authority deems appropriate about each such person’s engagement, work cooperatively with the Authority to solicit advice from the New York

State Joint Commission on Public Ethics, and, if deemed appropriate by Authority, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. Authority shall have the right to cancel or terminate this Agreement at any time if any work performed under this Agreement is in conflict with any Ethics Provision.

**ARTICLE 17.2 Confidentiality and Non-Disclosure**

The Design-Builder shall remain subject to the terms and conditions of the Confidentiality and Non-Disclosure Agreement dated as of \_\_\_\_\_ [*blank to be filled in prior to execution*] between the Design-Builder and the Authority, provided that the term “Confidential Information” therein shall be deemed to include any information described in section 2 thereof and disclosed to the Design-Builder in connection with the performance of this Agreement (whether or not disclosed to the Design-Builder in connection with the RFP). Without limiting the foregoing, the Design-Builder shall comply with section 4(a) of such agreement, provided that permitted use thereunder shall include use to the extent necessary for the Design-Builder to perform its obligations under this Agreement.

**ARTICLE 17.3 New York State Finance Law Sections 139-j and 139-k**

By execution of this Agreement, Design-Builder certifies that all information Design-Builder has provided to the Authority with respect to New York State Finance Law Sections 139-j and 139-k is complete, true and accurate. The Authority shall have a right to terminate this Agreement in the event the Authority finds that the certification made by the Design-Builder in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. This includes the Authority’s right to terminate this Agreement at any time in the event the Authority finds that Design-Builder is non-responsible or has failed to accurately disclose vendor responsibility information.

**ARTICLE 17.4 Covenant Against Contingent Fees**

Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working for Design-Builder, to solicit or secure this Agreement, and has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In the event Design-Builder violates this warranty, Authority shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from payments otherwise owed to the Design-Builder for services provided pursuant to this Agreement the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

**ARTICLE 17.5 Performance Security**

The Design-Builder has delivered a Payment Bond and a Performance Bond to the Authority, copies of which are attached hereto as Appendices IV and V. [*To be revised prior to execution as appropriate to reflect documents*

*Delivered*]: \_\_\_\_\_, which is the \_\_\_\_\_ of \_\_\_\_\_, has executed and delivered a guaranty of the Design-Builder’s obligations under the Contract Documents to the Authority concurrently with the execution of this Contract, a copy of which is



attached hereto as Appendix VI.] Such bonds and guaranties assure performance of the Design-Builder's obligations hereunder and shall be maintained in full force and effect throughout the duration of this Contract. Following Final Acceptance, the Design-Builder may request the Authority to allow replacement of the Performance Bond with a bond in the amount of 10% of the Contract Price, guarantying performance of Work required to be performed during the period following Final Acceptance, including Warranty Work. The request shall identify the amount of any premium reduction and other monetary benefits that will accrue to the Design-Builder or Principal Participants as a result of the replacement. The Authority shall have sole discretion to decide whether to accept a replacement bond, and may condition its acceptance on a reduction in the Contract Price equal to the monetary benefits associated with the replacement.

#### **ARTICLE 17.6 No Collusion or Fraud**

The Design-Builder hereby agrees that the only person or persons interested as principal or principals in the Proposal submitted by the Design-Builder for the Contract are named therein, and that no Person other than those mentioned therein has any interest in the above mentioned Proposal or in the securing of the award of the Contract; that the Contract has been secured without any connection with any Person or Persons other than those named; that the Proposal is in all respects fair and was prepared, and the Contract was secured, without collusion or fraud; and that neither any officer nor employee of the Authority has or shall have a financial interest in the performance of the Contract or in the supplies, Work, or business to which it relates or in any portion of the profits thereof. (See Sections 139-a and 139-b of the New York State Finance Law.)

#### **ARTICLE 17.7 Iran Divestment Act**

By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint venture or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

#### **ARTICLE 17.8 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

A. The Design-Builder certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the Design-Builder is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **ARTICLE 17.9 Compliance Monitoring**

In the event that the Design-Builder, any Principal Participant, or subcontractor is or becomes subject to a compliance monitoring requirement consequent to an agreement with a Governmental Person at any time prior to Final Acceptance, the Design-Builder shall promptly notify the Authority of the same. Compliance monitoring means any requirement imposed by a Governmental Person arising from an investigation of activities of the Design-Builder, Principal Participant, or subcontractor concerning alleged compliance violations, pursuant to which the subject entity is obligated to allow an independent third party to review, analyze, investigate or report on that entity's future compliance with Governmental Rules and/or contractual requirements arising from Governmental Rules. Said notice shall be in writing and shall include (i) a copy of the order, settlement or other document setting forth the requirement to implement a monitoring program and (ii) the specific requirements and conditions of the required program. If the order, settlement or other document is subject to a confidentiality protection that cannot be unilaterally waived by the Design-Builder or the entity that is subject to the requirement, the Design-Builder shall cause the subject entity to confirm that it is subject to a compliance monitoring requirement and to provide a confidential summary of the terms and conditions of the monitoring requirement to the Design- Builder, with a copy to the Authority.

The Design-Builder shall further cause the subject entity to promptly notify the Design-Builder, with a copy to the Authority, of any violations of the monitoring program by the subject entity and of any other concerns expressed by the monitor regarding compliance with the monitoring program requirements. In such event, Design-Builder shall provide to the Authority a detailed written report as to whether and to what extent, if any, the violation or concerns expressed by the monitor are relevant to Design-Builder's compliance with its Contract obligations, or to the performance of Work by the Design-Builder. The Authority shall at all times have the right to independently investigate whether any matter raised by the monitor will have any effect upon the Design-Builder's compliance with its Contract obligations or performance of Work by the Design Builder and/or subject entity. If any such violation occurs or concerns expressed by the monitor involve compliance requirements that are deemed by the Authority to be relevant to the Project, the Authority shall have the right to require the Design-Builder to institute, at Design-Builder's expense, additional data keeping, reporting, and/or other safeguard measures, including permitting independent auditing and access to pertinent records of the Design-Builder or the subject entity to mitigate risk that a similar violation will occur on the Project or be a cause for concern with respect to the Design-Builder's performance of its obligations under the Contract. The Authority's

audit rights under the Contract shall include the right to audit and access pertinent records of the Design-Builder or the subject entity relating to compliance issues described herein.

The Authority agrees to take all reasonable measures to maintain the confidentiality (to the extent permitted by law) of any information provided by Design-Builder and/or the subject entity pursuant to this Article 17.9 which the Design-Builder has reasonably designated as confidential, and the provisions of Appendix A, Section 9, of the Agreement shall apply with respect to disclosure of any such Records under the Statute (as defined in such section). Any intra-agency written materials prepared by the Authority, or any written inter-agency materials that are in the possession or control of the Authority, to the extent based on information or records designated as confidential or exempt from disclosure under the Statute as provided in the preceding sentence, shall also be designated and treated as such by the Authority to the fullest extent permitted by law. The Authority may disclose any of the aforementioned information, records and materials to the Department, provided that the Department agrees to treat such information, records and material in the same manner as required of the Authority under this paragraph.

The rights and remedies granted to the Authority under this Article 17.9 are in addition to, and not to the exclusion of, any and all of its rights and remedies under the Contract or at law or in equity.

#### **ARTICLE 18 NOTICES REGARDING CLAIMS, LITIGATION AND RULINGS**

The Design-Builder shall promptly provide written notice to the Authority's Project Manager and Authority's General Counsel (at the addresses identified in Article 13.1) of all claims, litigation and Governmental Persons rulings pertaining to the Work where such claims, litigation or rulings could subject the Authority to liability or substantially impair the completion of the Project. With such notice, the Design-Builder shall include a brief summary of the issue involved and the Design-Builder's position on such issue. Such written notice is additional to and not in place of any other notices required by the Contract Documents. The Design-Builder shall cooperate and provide, and shall require the Subcontractors to cooperate and provide, such information or records as may be reasonably requested by the Authority concerning such claims, litigation or rulings.

#### **ARTICLE 19 SELF PERFORMANCE**

The Design-Builder shall perform with its own organization Contract Work amounting to not less than 51 percent of the original total Contract Price. The Design-Builder's own organization shall be construed to include only Workers employed and paid directly by the Design-Builder and Equipment owned or rented by it, with or without operators. The Design-Builder's own organization does not include employees or Equipment of a Subcontractor, assignee, or agent of the Design-Builder and/or its Principal Participants, and any firm(s) performing Design, Construction Inspection and Quality Control Services. The Contract amount upon which the 51 percent requirement is computed includes the cost of Materials and manufactured products which are to be purchased or produced by the Design-Builder under the Contract provisions.

#### **ARTICLE 20 COOPERATION AND FURTHER ASSURANCES**

Design-Builder shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by the Authority to assist or facilitate the

submission by the Authority of any documentation, reports or analysis required by the State, and/or any other Governmental Person with jurisdiction over the Project. The Design-Builder shall promptly execute and deliver to the Authority all such instruments and other documents and assurances as are reasonably requested by the Authority to further evidence the obligations of the Design-Builder under the Contract.

**ARTICLE 21 SEVERABILITY**

If any clause, provision, section, article or part of any of the Contract Documents is ruled invalid by a court having proper jurisdiction, the invalidity or unenforceability of any such clause, provision, section, article or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section, article or part.

IN WITNESS WHEREOF, this Agreement has been executed by the Authority, acting by and through the Authority's Executive Director, and the Design-Builder or its appointed representative, which has executed this Agreement on the day and year first written above.

THIS CONTRACT IS NOT TO BE EXECUTED OR BECOME EFFECTIVE UNTIL IT SHALL FIRST BE APPROVED BY THE STATE COMPTROLLER AND FILED IN HIS/HER OFFICE (Section 112, State Finance Law.)

**New York State Thruway Authority**

**Design-Builder**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**New York State Attorney General**

**Office of the New York State Comptroller**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**(Acknowledgment by individual Design-Builder)**

STATE OF NEW YORK                    }  
COUNTY OF \_\_\_\_\_                } ss. :

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_  
\_\_\_\_\_ to me known to be the person described in and who executed the foregoing instrument, and  
acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public County

**(Acknowledgment by co-partnership Design-Builder)**

STATE OF NEW YORK                    }  
COUNTY OF \_\_\_\_\_                } ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_  
\_\_\_\_\_ to me known to be the person who executed the above instrument, who, being duly sworn  
by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_,  
consisting of himself/herself and \_\_\_\_\_ and that he/she executed the foregoing  
instrument in the firm name of \_\_\_\_\_ and that he/she had authority to sign same, and  
he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_  
\_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
Notary Public

**[Acknowledgment by Limited Liability Company (LLC) Design-Builder]**

STATE OF NEW YORK                    }  
COUNTY OF \_\_\_\_\_                } ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came and appeared \_\_\_\_  
\_\_\_\_\_ to me known to be the person who executed the above instrument, who, being duly  
sworn by me, did for himself/herself depose and say that he/she is a member of the LLC of \_\_\_\_\_  
\_\_\_\_\_ and that he/she executed the foregoing instrument in the LLC's name of \_\_\_\_\_ and that  
he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as  
the act and deed of said LLC of \_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
Notary Public

**(Acknowledgment by Design-Builder, if a corporation)**

STATE OF NEW YORK                    }  
COUNTY OF \_\_\_\_\_               } ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_  
\_\_\_\_\_ to me known, who being duly sworn, did depose and say that he/she resides in \_\_\_\_\_  
\_\_\_\_\_ that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation  
described in and which executed the foregoing instrument and that he/she signed his/her name thereto by  
order of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public

**(Acknowledgment by Design-Builder, if a joint venture)**

STATE OF NEW YORK                    }  
COUNTY OF \_\_\_\_\_               } ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_  
\_\_\_\_\_ to me known, who being duly sworn, did depose and say that he/she resides in \_\_\_\_\_  
\_\_\_\_\_ that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the joint venture  
described in and which executed the foregoing instrument, and that he/she signed his/her name thereto by  
Power of Attorney granted by that joint venture.

\_\_\_\_\_  
Notary Public

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**APPENDIX A**  
Standard Clauses For New York State Thruway Authority  
Contracts And Federally-Funded Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.
2. **COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$50,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.
3. **WORKERS' COMPENSATION AND DISABILITY BENEFITS.** This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.
4. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with State Labor Law §220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in State Labor Law §230, then, in accordance with §239 thereof, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
5. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the New York State Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with subdivision 3-a of Section 220 of the New York State Labor Law shall be a condition precedent to payment by the Authority/Corporation of any Authority/Corporation approved sums due and owing for work done on the project.

**6. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority/Corporation a non-collusive bidding certification on the Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract. The Authority/Corporation will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority/Corporation official, in writing, that said records should not be disclosed; (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's/Corporation's right to discovery in any pending or future litigation.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been

delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this contract the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Authority/Corporation contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The Authority/Corporation will consider compliance by a Contractor or its subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Authority/Corporation shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law, and if such duplication or conflict exists, the Authority/Corporation may waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining thereto.

(d) The EEO Goals for the Project are as follows:

MBE Goal: 6%

WBE Goal: 7%

**12. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall

control.

13. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

15. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

16. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority/Corporation. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority/Corporation.

18. **NON-PUBLIC PERSONAL INFORMATION.** The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Authority which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

19. **IRAN DIVESTMENT ACT.** In accordance with State Public Authorities Law §2879-c, if this is a contract for work or services performed or to be performed, or goods sold or to be sold, the Contractor subscribes and affirms, under penalty of perjury, that: by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. For the purposes of this clause, the term "person" shall be as defined in subdivision (1)(e) of Section 165-a of the State Finance Law.

20. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

21. **NO WAIVER OF PROVISIONS.** The Authority's/ Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set

forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

22. **ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.



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