

HTFC CONSTRUCTION AGREEMENT

**INSTRUCTIONS FOR AWARDED AND COMPLETING CONSTRUCTION AGREEMENT,
SCHEDULES, GENERAL CONDITIONS & EXHIBITS**

REQUIREMENTS PRIOR TO AWARD OF CONTRACT

Before this Construction Agreement can be executed, the following conditions must be complied with:

- (1) HTFC shall have approved the Contractor.

COMPLETION OF CONTRACT DOCUMENTS

The following information needs to be inserted in order to complete the Construction Agreement:

Construction Agreement

Cover Page: Insert Contractor name and date of Agreement.

Preliminary Statement: Insert date of Agreement and Contractor name, state of formation, type of entity and address.

Signature Page: Insert Contractor name.

Schedule A – Work Order

Instructions for completing the Work Order for each Project are included at the front of the Schedule A.

Schedule C – Authorized Reps and Contact Information

Verify/insert name and contact information for HTFC and Contractor.

Schedule D – General Conditions

Cover Page: Insert Contractor name and date of Agreement.

GOSR Supplementary Conditions for Contracts

Instructions for completing the Supplementary Conditions for each Subcontract and lower-tiered Subcontract are included at the front of the Supplementary Conditions.

PROTOCOL FOR FINAL CONSTRUCTION AGREEMENT

Please prepare four execution copies of the complete Construction Agreement, including Schedules, General Conditions, Exhibits and all other attachments – each set must be bound as one document.

HTFC CONSTRUCTION AGREEMENT

HTFC: HOUSING TRUST FUND CORPORATION
60 Broad Street, 26th floor
New York, New York 10004

CONTRACTOR DRG CONSTRUCTION LLC
245 South Main Street
Freeport, NY 11520

DATED:

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ALL TERMS AND CONDITIONS CONTAINED IN INVITATION FOR BID (“IFB”) STORM HARDENING AT EDGEWATER PARK VOLUNTEER FIRE DEPARTMENT IFB# GOSR-IFB-2022-01 AND THE RESPONSIVE BID DOCUMENTS PROVIDED BY DRG ARE INCORPORATED HEREIN BY REFERENCE, UNLESS EXPRESSLY MODIFIED IN THIS CONTRACT. THIS INCLUDES ALL SCHEDULES, ATTACHMENTS, AND APPENDICES FROM IFB STORM HARDENING AT EDGEWATER PARK VOLUNTEER FIRE DEPARTMENT IFB# GOSR-IFB-2022-01, INCLUDING BUT NOT LIMITED TO THE ATTACHMENTS AND APPENDICES LISTED BELOW, AS WELL AS THE RESPONSIVE BID DOCUMENTS RECEIVED FROM DRG. IN THE CASE OF A CONFLICT BETWEEN THE FOREGOING, EXCEPT AS OTHERWISE REQUIRED UNDER APPLICABLE STATE OR FEDERAL LAW OR REGULATION, THE MORE STRINGENT TERMS AND REQUIREMENTS SHALL CONTROL.

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General Decision Number NY20220003 07/08/2022

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(CCA-2)

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CONSTRUCTION AGREEMENT (this “Construction Agreement” or this “Agreement”) dated as of _____, 2022 between HOUSING TRUST FUND CORPORATION, a corporation, having an office at 60 Broad Street, 26th floor, New York, New York 10004, Attention: Katherine Brennan (“HTFC”) and DRG CONSTRUCTION LLC, a corporation, with an office at 245 South Main Street, Freeport, New York 11520, Attention: Dennis Gunn (“Contractor”).

Introductory Statement

HTFC, through the Governor’s Office of Storm Recovery (“GOSR”), is undertaking programs in support of recovery, blight removal, disposition and redevelopment for those properties impacted by Disaster Relief Storms including, but not limited to, Superstorm Sandy, Hurricane Irene or Tropical Storm Lee, in connection with GOSR’s administration of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Disaster Recovery (“CDBG-DR”) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2). Contractor has been selected to perform construction work on certain property or properties (each, a “Project”) to be identified in one or more Work Orders, each in the form of Schedule A attached hereto, and executed subsequent to the execution of this Construction Agreement (each, a “Work Order”). Contractor has advised HTFC that Contractor is experienced and properly qualified and desires to perform and finish certain services for HTFC in connection with the same.

For the purpose of assessing the cost and risks of the obligations which Contractor is assuming under this Agreement and subsequent issued work orders, Contractor acknowledges that Contractor will have had a full and complete opportunity, before signing any Work Order hereunder, to conduct a physical inspection of the applicable Project Site to be covered by the respective Work Order (defined below). Contractor acknowledges, further, that Contractor is taking the entire and exclusive risk of all site conditions, disclosed or undisclosed, foreseen or unforeseen, except as expressly set forth in the General Conditions, and will not seek Change Orders or Extra Payment (each as defined below) of any kind from HTFC except for Discretionary HTFC Changes and Extraordinary Conditions (as defined below). Notwithstanding Contractor’s assumption of risk for Unforeseen Conditions under Article 1 of the General Conditions, HTFC reserves the option make an equitable adjustment to the Work Order Price through the use of a Discretionary HTFC Change Order issued to Contractor during the term of the applicable Work Order. If approved by HTFC, Contractor will be compensated for changes in the applicable Project Scope Documents in accordance with the terms of the Change Order.

The Benefitted Party(ies) (defined below) identified in a particular Work Order will approve and consent to the Work and to allowing access to the Project Site for performance of the Work prior to execution of the Work Order by HTFC and Contractor, pursuant to the Direct Beneficiary Grant Agreement (defined below), and will be a third party beneficiary of Contractor's obligations under this Construction Agreement with the right to enforce all warranties and other remedies directly against Contractor.

Contractor acknowledges that performance of this Construction Agreement requires compliance with certain federal and state requirements as set forth in Section 9.1 below and the GOSR Supplementary Conditions for Contracts which are incorporated by reference from the IFB and bid documents.

NOW, THEREFORE, in consideration of their mutual promises, and intending to be legally bound hereby, HTFC and Contractor agree as follows:

ARTICLE 1. General Conditions; Contract Documents; Defined Terms

- 1.1 "General Conditions" means the General Conditions for the Contract attached hereto which are incorporated by reference herein.
- 1.2 The Contract Documents consist of the Contract Documents as defined under the General Conditions. This Construction Agreement and each Work Order form part of the Contract Documents.
- 1.3 All words and phrases defined in the Contract Documents have the same meaning in this Construction Agreement. Refer to Article 1 of the General Conditions for the principal list (but not all) of the defined terms.

ARTICLE 2. The Work

- 2.1 Contractor shall perform the Work in accordance with the Contract Documents.

ARTICLE 3. Contract Price

- 3.1 The Work Order Price for each Project shall be the amount specified as the "Work Order Price" in the applicable Work Order. HTFC agrees to compensate Contractor for its

performance of the services under any proper and fully executed Work Order. Notwithstanding the latter, Contractor agrees that in no event will HTFC pay to Contractor more than \$2,400,000.00 (“Contract Price”) for the services under all applicable work orders under this Construction Agreement unless the Contract Price is first modified in writing by a fully executed Amendment to this Construction Agreement. For the avoidance of doubt, the Contract Price for all work to be performed pursuant to this Construction Contract **shall not exceed \$2,400,000.00.**

ARTICLE 4. Starting Date; Completion Date

- 4.1 The “Starting Date” for the Work on each Project shall be as specified in the applicable Work Order.
- 4.2 The “Completion Date” for all the Work of this Contractor on each Project shall be as specified in the applicable Work Order, subject to extension if and to the extent permitted under Article 18 of the General Conditions.
- 4.3 **Period of Performance.** Contractor will perform the Work set forth in all applicable Work Orders under this Construction Agreement during the period:

November 1, 2022 thru October 31, 2024 (Initial term of 2 years)

Three one (1) year option terms will be permitted under this contract, upon exercise of a minimum of thirty (30) days prior written notice, for a total contract term not to exceed five (5) years.

ARTICLE 5. Authorized Representatives of HTFC and Contractor; GOSR Referee; the Project Manager

- 5.1 The authorized representatives of the Contractor are identified in Schedule C to the Construction Agreement.
- 5.2 The authorized representatives of HTFC are identified in Schedule C to the Construction Agreement.

- 5.3 The “GOSR Referee” means the GOSR Appeals Resolution Committee and includes any similar successor entity designated by HTFC.
- 5.4 The “Project Manager” for a particular Project will be identified in the Work Order and shall include any successor designated by HTFC.

ARTICLE 6. Miscellaneous

- 6.1 Schedules A through C hereto and each Work Order executed by HTFC and Contractor pursuant to this Construction Agreement are and shall be deemed part of (and incorporated in) this Construction Agreement as though fully set forth in this Construction Agreement.
- 6.2 In the event of any question as to whether a particular provision of this Contract complies with the Construction Contracts Act, N.Y. Gen. Bus. Law § 756-758 (the “Act”), the particular provision shall be construed in a manner which results in compliance with the Act.
- 6.3 This Construction Agreement may be executed (a) in counterparts, a complete set of which shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Construction Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

ARTICLE 7. Bonds

- 7.1 **BONDING REQUIREMENTS (Applicable to construction and facility improvement contracts exceeding \$100,000).** The Contractor shall comply with New York State bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements, as further specified in Section 7.2 below:
 - A. A performance bond on the part of the Contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the Contractor’s obligations under such contract.
 - B. A payment bond on the part of the Contractor for 100% of the contract price. A

“payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

7.2 Contractor shall furnish to HTFC, prior to Contract approval, a performance bond as well as a payment bond guaranteeing prompt payment of monies due to all persons furnishing labor or materials to the Contractor or any subcontractors in the prosecution of the work provided for in such Contract, each in the amount of 100% of the contract price. (The Performance Bond and the Payment Bond are referred to collectively as the “Bonds”.) In the event of contract amendment(s) resulting from change orders or otherwise, Contractor will be required to purchase an additional bond(s) covering the specific amendment amount.

7.3 The Bonds shall be issued by a reputable and well-established surety company or companies (collectively, the “Surety”) satisfactory to HTFC, approved in writing by HTFC, and licensed to do business in the State of New York.

7.4 HTFC's payment to Contractor or any other Person of all or any portion of the Work Order Price, or HTFC's failure to retain any portion of the Work Order Price (whether or not specifically permitted under this Contract), or any change in or variation in the time, method or condition of payment of the Work Order Price by HTFC, or any extension of Contractor's time for performance or the issuance of any Change Order or other modification of the Contract Documents, shall not discharge or modify to any extent whatsoever the obligation of the Surety upon the Bonds.

ARTICLE 8. Required Insurance

8.1 Schedule B sets forth general insurance requirements applicable to the insurance coverages required of Contractor under each Work Order.

ARTICLE 9. GOSR Supplementary Conditions for Contracts

- 9.1 Contractor shall (a) comply with the GOSR Supplementary Conditions for Contracts incorporated by reference from the IFB (the “Supplementary Conditions”), (b) include such Supplementary Conditions in any Subcontract entered into under this Construction Agreement, and (c) require all Subcontractors to flow-down such terms to all lower-tiered Subcontractors. These Supplementary Conditions include required terms for project contracts, HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with HTFC, Standard Clauses for Contracts with HTFC and required diversity forms.

ARTICLE 10. Contractor Evaluation

- 10.1 Contractor acknowledges and agrees that HTFC may, at its option, conduct an evaluation of Contractor’s performance after Completion of the Work under any Work Order, and that the results of any such evaluation will be a factor in Contractor’s continuing eligibility for bidding on and award of additional Work Orders. HTFC reserves the right, at its option, to disqualify Contractor from such bidding and awards solely on the basis of a negative evaluation. Contractor agrees to participate in HTFC’s evaluation process and provide all requested information.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, HTFC and Contractor have duly executed this Construction Agreement (including, but not limited to, the Schedules, Attachments, Appendices, General and Supplemental Conditions, and Exhibits) as of the date first above written.

HTFC:

HOUSING TRUST FUND CORPORATION

By: *Katherine Brennan*
Name: Katherine Brennan
Title: Executive Director

CONTRACTOR:

DRG CONSTRUCTION LLC

By: *Dennis Gunn*
Name: Dennis Gunn
Title: President

SCHEDULES

SCHEDULE A Form of Work Order for Each Project

SCHEDULE B Required Insurance

SCHEDULE C Authorized Representatives of HTFC and Contractor

SCHEDULE D General Conditions

SCHEDULE A

Form of Work Order for Each Project

[see attached]

REQUIREMENTS PRIOR TO EXECUTION OF WORK ORDER

Before any Work Order can be executed, the following conditions must be complied with:

- (1) The Benefitted Party(ies) and HTFC shall have signed the Direct Beneficiary Grant Agreement.
- (2) If required under the Work Order, Contractor shall have delivered to HTFC the Performance Bond and Payment Bond. NOTE: Bonds have already been furnished to HTFC in the amount of 100% of the full contract price.
- (3) INTENTIONALLY OMITTED
- (4) Contractor shall have delivered to HTFC certificates of insurance evidencing compliance with the Required Insurance Coverage Types, Insurance Limits, and Endorsements as set forth herein in Sections A and B of Schedule B of this contract, and in the Work Order.
- (5) Contractor shall have confirmed and accepted all Scope Documents listed in and to be attached to the Work Order.

COMPLETION OF EACH WORK ORDER

Introductory Statement

Insert date of Construction Agreement.

Insert Contractor Name.

Insert Work Order Number, Project ID, Project Site, Description of Work, and Work Order Value

Insert Work Order Number and Project ID at top of signature page

Insert effective date of Work Order.

Work Order Terms and Conditions

A: Insert Work Order Number and Project ID at top of page

B: Insert address of the Project, Benefitted Party(ies) name and contact information

C: Insert HTFC's Project Manager name and contact information

D: Insert Starting Date and Completion Date for the Work.

E: Insert the Work Order Price and payment schedule.

F: Check "yes" or "no" for bond requirement.

G: Confirm limits for Required Insurance.

H: Check "yes" or "no" for Structural Movers Cargo or Riggers Liability insurance requirement.

I: Insert list of other reference documents, including Scope Documents and other plans, documents and reports which impact the Contractor's scope of Work.

PROTOCOL FOR EACH FINAL WORK ORDER

Please prepare four execution copies of the applicable complete Work Order and any attachments – each set must be bound as one document.



Governor's Office of Storm Recovery

WORK ORDER

Introductory Statement

HOUSING TRUST FUND CORPORATION (“HTFC”) has entered into a Construction Agreement dated as of _____, 2022 (including, but not limited to, all Schedules, Attachments, Appendices, General Conditions and Exhibits, and Supplementary Conditions thereto, the “Construction Agreement” or the “Agreement”) with _____ (“Contractor”), pursuant to which Contractor shall perform construction work on the specified Project Site. The Construction Agreement contemplates that for each such Project, HTFC and the Benefitted Party(ies) will enter into a Direct Beneficiary Grant Agreement with respect to the specific Project and HTFC and Contractor will enter into a Work Order in this form setting forth the terms and conditions for the specific Project. Contractor hereby acknowledges that it has received and reviewed a copy of the Direct Beneficiary Grant Agreement with respect to the specific Project covered by this Work Order. HTFC desires to engage Contractor to undertake the Project described in this Work Order pursuant to the terms of the Construction Agreement; and Contractor desires to undertake and perform the Work of this Project. Accordingly, upon execution by the parties below, this Work Order becomes part of, and is incorporated into, the Construction Agreement. All words and phrases defined in the Contract Documents have the same meaning in this Work Order.

Scope of Work: *The Work described in the Scope Documents and the other terms and conditions listed in the attached Work Order Terms and Conditions for the PROJECT ID listed below only.*

Work Order Number	Project ID	Project Site	Description of Work	Work Order Value

[SIGNATURE PAGE FOLLOWS THIS PAGE]

Work Order Number	Project ID

**Effective Date of
Work Order:** _____

Completion Date: *Listed in in the attached Work Order Terms and Conditions.*

IN WITNESS WHEREOF, HTFC and Contractor have duly executed this Work Order (including the Terms and Conditions attached hereto) as of _____, __ 2022.

HTFC:

HOUSING TRUST FUND CORPORATION

By: _____
Name:
Title:

CONTRACTOR:

[_____]

By: _____
Name:
Title:

Work Order Number	Project ID

Work Order Terms and Conditions

A. PROJECT; PROJECT SITE AND Benefitted Party(ies)

The “Project” is the Work described in the Scope Documents attached to this Work Order to be performed in accordance with this Construction Agreement on the property located at and on the Project Site.

The “Project Site” is [street address], [city], NY [zip code].

The “Benefitted Party(ies)” of the Project Site is [name(s) and contact information]

B. PROJECT MANAGER

HTFC’s “Project Manager” for the Project is [name and contact information].

C. STARTING DATE AND COMPLETION DATE

The “Starting Date” for the Work is _____, 20__.

The “Completion Date” for all the Work of Contractor shall be _____, 20__, subject to extension if and to the extent provided under Article 18 of the General Conditions.

D. WORK ORDER PRICE; PAYMENT SCHEDULE

The “Work Order Price” is \$_____. The Work Order Price includes the cost of the Bonds and the Structural Movers Cargo or Riggers Liability Insurance, if required, and the cost of all other Required Insurance.

Work Order payments will be made according to the following “Payment Schedule” for the Work Order Price:

[payment shall be made upon Completion of the Work as set forth in Article 26 of the General Conditions]
or
[insert payment schedule]

Invoices shall be submitted by the 10th and 24th of each month for processing, as applicable. Each Work Order will be invoiced and paid separately.

E. BONDS

(4) [___] YES or [___] NO – A Payment Bond and Performance Bond is required for the Work under this Work Order. NOTE: Bonds have already been furnished to HTFC in the amount of 100% of the full contract price.

F. INSURANCE COVERAGE AMOUNTS

For purposes of this Work Order, "Insurance Limits" (as such term is used in the Construction Agreement) shall mean the following:

[insert list of required coverages for applicable Work Order]

Commercial General Liability Insurance: \$1 Million per occurrence, bodily injury and property damage combined; \$1 Million per occurrence for personal and advertising injury; \$2 Million products completed operations aggregate, and \$2 Million per location aggregate.

Comprehensive Automobile Liability: \$1 Million combined single limit for both bodily injury and property damage.

Excess Liability/Umbrella Insurance: \$8 Million per occurrence and \$8 Million per location aggregate

Workers' Compensation Insurance and Disability Benefits Insurance: Statutory limits

Standard All Risk Property Insurance

Professional Liability including Pollution Legal Liability Insurance (if Contractor is providing professional services as a Pollution Mitigation and/or Abatement Contractor): \$2 Million per claim limit

Contractor's Pollution Liability (CPL) Coverage (if Contractor will be hauling hazardous material): \$5 Million

G. STRUCTURAL MOVERS CARGO OR RIGGERS LIABILITY INSURANCE

YES or NO – Structural Movers Cargo or Riggers Liability Insurance is required for the Work under this Work Order.

H. SCOPE DOCUMENTS

1. Project Specifications prepared by [_____], dated [_____]
2. Contract Drawings prepared by [_____], dated [_____] (if any)
3. IFB-2022-01_ Firehouse; Addendums 1-6 GOSR IFB-2022-01_Firehouse
- 4.

[list other reference documents applicable to this project, such as site assessment or engineering reports, other consultant reports, instructions for sequence of work, etc.]

I. OTHER REQUIREMENTS

These requirements shall apply to each and every Project for which HTFC and Contractor enter into a Work Order. In each such case Contractor shall comply with these requirements in completing the Work for each applicable Project under this Construction Agreement. The cost for any and all such requirements is included in the Work Order Price.

1. Contractor is responsible for having a New York State business license.
2. Contractor shall not display any signs, posters, or other advertising on/or about the Project Site without the prior written consent of HTFC.
3. Contractor shall be responsible to close up and secure the Work after each time it performs the Work at the Project Site.
4. Contractor is responsible to provide a report for each property that it performs Work. Such report shall indicate the address and time when the required Work was performed. This report shall be required for verification of Work and approval of invoices.
5. Contractor shall be responsible for and promptly repair and make good at its own expense, all damage to the Project Site, streets, sidewalks, curbs, utility lines, adjoining premises or any other public or private property, resulting from, or in connection with the performance of the Work.
6. Contractor shall attend meetings as required by the Project Manager.
7. It is mandatory that all personnel wear the appropriate safety equipment as required by OSHA standards. Contractor shall be responsible for site safety.
8. Contractor shall comply with all Federal and Local laws regarding noise control. Every effort shall be made by Contractor to reduce noise, disruption, and/or inconvenience to the surrounding community.
9. Contractor shall furnish for its, personnel proper drinking water and first aid kits.
10. Contractor shall provide all engineering, surveying, field measuring, lines, elevations, and lay-out required for execution of the Work.
11. Contractor shall coordinate all logistics, staging and storage area(s) with the Project Manager and the Benefitted Party(ies)
12. For projects within New York City, all private carting firms employed directly or by Subcontract must comply with the City of New York Business Integrity Commission. Copies of such registration must be submitted to the Project Manager prior to the rendering of any private carting services at the Project Site.
13. Contractor shall obtain all permits and inspections required for the performance of the Work and shall include all costs for permits, fees, bonds, assessments and municipal inspections applicable to the Work as levied or required by all public authorities having jurisdiction. Provide all required licenses, OSHA, FDNY and DOB certifications and requirements. All NYC and other jurisdictional DOT permits for street and sidewalk closings, opening, crossings, material storage, equipment, etc., to execute the work will be obtained by Contractor.
14. Contractor will be responsible for all sweeping, pickup and removal of all dirt and debris resulting from the performance of his operations and suitable disposal (recycling) of the debris. Daily and final cleanup shall be performed by Contractor. Cleanup may also be required at any time as directed by

the Project Manager to ensure compliance with the project safety plan. Contractor shall include all snow removal and maintain sidewalks free of ice and snow during the course of the contract. Should mold be encountered during the Work, Contractor shall remove and dispose of in a legal and proper manner.

15. Contractor is to supply and pay the cost for all cranes, hoists, lifts, staging, scaffolding and rigging needed to complete the Work, if any. Contractor is responsible for the erection, dismantling, and maintenance of any scaffolding, ladders, swing stages, etc. required to perform the Work. All scaffolds, ladders, staging, etc., shall be constructed and used in strict accordance with OSHA regulations and the project safety plan.
16. Contractor shall provide all temporary signage, warning devices, flagmen or other means of traffic control. Work areas in accordance with all Federal, County, State and Local laws, codes or ordinances as required to perform this scope of work. Contractor shall also provide all necessary means to control traffic disrupted by the Work.

SCHEDULE B

Required Insurance

A. Contractor Insurance

1. The “Required Insurance” under this Contract consists of all coverages described in, and required under this Section A and under Section C (if required by the applicable work order). The cost of all Required Insurance is included in the Work Order Price and shall be borne by Contractor at Contractor’s sole expense. It shall be in GOSR’s sole discretion to accept or reject alternative insurance requirements.
2. Contractor shall secure and maintain, in full force and effect without interruption during all periods of services covered by this Agreement, the Statement of Work, or any Work Orders, the following coverages (with the Insurance Limits as specified in the applicable Work Order, as set forth in Section B below):
 - (a) workers' compensation insurance and New York State statutory disability benefits insurance, as required by the provisions of the Workers’ Compensation Law (WCL) of the State of New York, covering employers’ liability, workers’ compensation coverage, and disability benefits coverage for all persons employed in connection with the Work (including those by Subcontractors or independent contractors engaged by Contractor);
 - (b) commercial general liability insurance covering liability for bodily injury (including death) and property damage combined, and for personal and advertising injury. Such insurance shall be written on an “occurrence” basis and shall apply on a primary, non-contributory basis irrespective of any other insurance, whether collectible or not, and the policy(ies) shall be endorsed to name HTFC, the State of New York, and all “Indemnitee(s)” as “Additional Insured”. The policy(ies) shall cover the Project Site and all streets, alleys and sidewalks adjoining or appurtenant to the Project Site, and including:
 - (i) operations-premises liability;
 - (ii) contractor's protective liability on the operations of all Subcontractors;

- (iii) products/completed operations coverage (with completed operations maintained within Contractor's ongoing general liability insurance program for not less than six years after completion of the Work (or such shorter period which HTFC may approve);
 - (iv) broad form property damage coverage;
 - (v) broad form contractual liability (designating Article 6 of the General Conditions);
 - (vi) a broad form comprehensive general liability endorsement (including explosion, subsidence, collapse, and underground damage, libel, slander, and false arrest, and products liability);
 - (vii) no exclusions relating to (a) gravity related injuries, and (b) injuries sustained by the employee of an insured or any insured rather than "the insured";
 - (viii) fire damage and water damage legal liability;
 - (ix) protective liability insurance in HTFC's name for the operations of Contractor and all Subcontractors; and
 - (x) deletion of the Contractual Liability Exclusion as applicable to construction or demolition to be performed within 50 feet of railroad track; and
 - (xi) property of others in the care, custody and control of Contractor; and
- (c) comprehensive business automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles utilized in or related to Contractor's activity or performance under the Contract, the Statement of Work, or any Work Orders, insuring against liability for bodily injury (including death) and property damage combined;

- (d) excess or umbrella liability, applying on a primary, non-contributory basis irrespective of any other insurance, whether collectible or not, applying in excess over all limits and coverages in paragraphs 2(b) and 2 (c) above, and the policy shall be endorsed to name HTFC, the State of New York, and all “Indemnitee(s)” as “Additional Insured”.
 - (e) contractors’ pollution legal liability insurance (for any Contractor, Subcontractor or other Person providing professional services as a pollution mitigation and/or abatement contractor) which shall include coverage for loss and expense arising out of the acts, errors or omissions of the Contractor with respect to, among other things, coverage for-asbestos, lead paint, and mold, and including non-owned disposal site(s) liability, transportation pollution liability coverage endorsement, additional insured endorsement, and additional insured endorsement- products completed operation hazard, with limits as set forth in the applicable Work Order, and any Subcontractor or other Person performing environmental testing shall also procure pollution legal liability coverage of the same type with limits as set forth in the applicable work order; and
 - (f) Professional liability (for any Contractor, Subcontractor or other Person providing engineering or other professional services) covering loss and expense arising out of the acts, errors or omissions of the Contractor or its subcontractors, and/or those acting under the direction or control of either of them and/or those for whose acts the Contractor may be liable, with limits as set forth in the applicable work order. In the event that coverage under such policy is terminated upon or after the completion of the project, then an extended reporting period of not less than two (2) years will be purchased by the Contractor.
3. The commercial general liability, business automobile liability, excess or umbrella liability and pollution legal liability coverage shall be endorsed to designate HTFC, the State of New York, and all “Indemnitee(s)” (but excluding any licensed engineers with respect to liability for professional malpractice or negligence)), as additional insureds. The commercial general liability additional insureds coverage shall be issued on ISO

Forms CG 20 10 07 04 and 20 37 07 04 or their equivalent. Coverage provided to the additional insureds shall be on a primary and non-contributory basis.

4. Except as specified for completed operations coverage under paragraph 2(b)(iii) above, Contractor shall maintain all coverages of Required Insurance without interruption from the date of this Contract through Completion and thereafter during any period while Contractor and/or any Subcontractor is performing any Work (including any warranty or corrective work) or furnishing any services pursuant to the Contract Documents.
5. Contractor shall require that all Subcontractors carry liability and property damage insurance of the same types and coverages as specified in paragraphs 2 and 3 of this section A (except for the coverage under (2)(d)), as well as coverage specified in section C below (where applicable); and Contractor shall require each Subcontractor to furnish the same documentation of such coverage as required of Contractor hereunder, unless and except as HTFC agrees otherwise in writing. However, Contractor shall require subcontractors to maintain greater limits and/or other additional insurance coverages if greater limits and/or other or additional insurance coverages are (a) generally imposed by the Contractor given its normal course of business for subcontracts for similar services to those being provided by the subcontractor at issue; or (b) reasonable and customary in the industry for similar services to those anticipated hereunder.
6. Contractor is advised that HTFC does not maintain, and will not maintain, insurance which would cover Contractor's temporary plant and equipment. Contractor shall secure and maintain insurance for temporary plant and equipment ("Plant and Equipment Insurance"). This requirement for Plant and Equipment Insurance is solely for the benefit of Contractor, and the failure of Contractor to secure such insurance or to maintain adequate levels of coverage shall not subject HTFC to liability for losses of owned or rented equipment. Such Plant and Equipment Insurance shall contain an endorsement stating that "permission is granted to complete and occupy"; and, if any offsite storage location is used for plant and equipment, such insurance shall cover, for full insurable value, all such items on or about any such off-site storage location or in transit to the Project Site. Contractor shall be fully responsible for, and shall carry "all risk" insurance

on, materials and equipment to become part of the Work until same are delivered to, and accepted at, the Project Site.

7. Each policy of Required Insurance shall contain the following (whether or not requiring additional premium):
 - (a) an agreement by the insurer that such policy shall not be cancelled or amended or non-renewed, or any coverages reduced or materially modified, without at least 30 days prior written notice by registered mail to HTFC at the address specified in this Contract; (b) deductibles of not more than the amounts allowed in Section B below;
 - (b) an endorsement that:
 - (i) no unintentional act or omission of HTFC, any Benefitted Party(ies) Contractor or any other named or additional insured; and
 - (ii) no violation of warranties, declarations or conditions of the policy or any application therefor by any of the aforementioned,

shall affect or limit the insurer's obligation with respect to HTFC and any other named or additional insured;
 - (c) a waiver of subrogation by the insurer with respect to HTFC and any other named insured and additional insured with respect to professional malpractice or negligence; and
 - (d) a waiver by the insurer of any claim for insurance premiums against HTFC.
 - (e) All policies will provide primary coverage for obligations assumed by Contractor under this Agreement, the Services or Scope pf Services, or any Work Orders.

Prior to commencing any work but no later than ten (10) days after receipt of the Notice of Award, Contractor and each Subcontractor shall deliver to HTFC certificates (and copies of the applicable policy if requested by HTFC) evidencing the Required Insurance, BEFORE bringing any Employees, materials, or equipment to a Project Site, or otherwise commencing the Work, whether on a Project Site, or elsewhere. Not later than five days

before any renewal premiums become due, Contractor shall deliver endorsements or other evidence of the renewal of all insurance. As a condition to Completion, Contractor shall deliver to HTFC evidence of continuing completed operations coverage as required under paragraph 2(b) above.

8. All Required Insurance shall be on a per location or per project basis and shall be provided through valid and enforceable policies issued by a company or companies which are licensed to issue insurance in the State of New York and having A.M. Best's Ratings of "A-" and "VII" or better (or which are otherwise reasonably acceptable to HTFC). All liability insurance of every kind required under this Schedule B (except for the insurance required under A.2 (e) and (f) above) shall be written on a per "occurrence" basis. For insurance required under A (2) (e) and (f), in the event coverage is on a claims-made basis or is terminated upon completion of the project, then Contractor shall purchase an extended reporting period of not less than 3 years.
9. Any additional insurance policies necessary to obtain required permits or otherwise comply with Laws, including any changed circumstances regarding the performance of the Work shall be at the risk of the Contractor.
10. The Contractor shall provide Certificates of Insurance to HTFC prior to the commencement of work, and prior to any expiration or anniversary of the respective policy terms, evidencing compliance with all insurance provisions set forth above, and shall provide full and complete copies of the actual policies and all endorsements upon request. Failure to provide adequate or proper certificate of insurance, specifically including HTFC, the State of New York, and all "Indemnitee(s)" as "Additional Insureds" shall be deemed a breach of contract. An Accord Certificate of Insurance is an acceptable form to submit evidence of all forms of insurance coverage except Workers' Compensation Insurance and Disability Benefits Insurance. For evidence of Workers' Compensation Insurance, the contractor must supply one of the following forms: Form C-105.2 (Certificate of Workers' Compensation Insurance issued by a private carrier), Form U-26.3 (Workers Compensation Insurance issued by the State Insurance Fund), Form SI-12 (Certificate of Workers' Compensation Self- insurance), Form GSI-105.2 (Certificate of Participation in Workers' Compensation Group Self-Insurance), or CE-

200 (Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage). For evidence of Disability Benefits Insurance, the contractor must supply one of the following forms: Form DB-120.1 (Certificate of Disability Benefits Insurance), Form DB-155 (Certificate of Disability Benefits Self-Insurance), or CE-200 (Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage).

B. Insurance Limits

The required insurance coverage limits for each Project are set forth in the applicable Work Order.

C. Structural Movers Cargo or Riggers Liability Insurance

If required by the applicable Work Order, Contractor shall secure and maintain, without interruption during the course of any construction work which includes home elevation through completion, Structural Movers Cargo or Riggers Liability Insurance, on a completed replacement value basis, covering, at least, property of others in the care, custody and control of Contractor and its subcontractors which are performing the elevation work ("elevation subs"), during rigging operations, transport, loading or unloading, rigging, hoisting, erecting, lowering, placing and removing with a crane and in conjunction with other equipment (which may include, but not limited to, forklifts, dollies, skids), and insuring against collapse and all other perils associated with elevation activities, with HTFC, GOSR, the State of New York, and all "Indemnitee(s)" as Additional Insureds. The deductible shall be in an amount approved by HTFC and Contractor will be responsible for paying the same for all claims. The policy(ies) will provide primary coverage for the obligations assumed by Contractor and/or its elevation subs and will provide for a waiver of subrogation against HTFC, GOSR, the State of New York, and all "Indemnitee(s)". "Benefitted Parties" shall have the exclusive right to adjust and negotiate any claims against the Structural Movers Cargo or Riggers Liability Insurance in its sole discretion

SCHEDULE C

Authorized Representatives of HTFC and Contractor

HTFC's authorized representatives

HTFC's authorized representative is:

Katherine Brennan
Executive Director
Governor's Office of Storm Recovery
60 Broad Street, 26th floor
New York, NY 10004
(212) 480-2744
Katherine.Brennan@stormrecovery.ny.gov

Notices to HTFC shall also include a copy to:

[name, address, phone, e-mail]

Contractor's authorized representatives

Contractor's authorized representative is:

Kelly Gunn
CFO
DRG Construction LLC
245 South Main Street
Freeport, NY 11520
516-415-7774
Kelly@drgconstructionus.com

Notices to Contractor shall also include a copy to:

Dennis Gunn, 245 South Main St Freeport NY 11520 (516) 415-7774
dennis@drgconstructionus.com

Sabrina Dentice, 245 South Main St Freeport NY 11520 (516) 415-7774
sabrina@drgconstructionus.com

SCHEDULE D

GENERAL CONDITIONS

HTFC: HOUSING TRUST FUND CORPORATION
60 Broad Street, 26th floor
New York, New York 10004

CONTRACTOR: DRG CONSTRUCTION LLC
245 South Main Street
Freeport, New York 11520

DATED:

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EXHIBITS

- EXHIBIT A Forms of Partial Waivers of Lien for Contractor and Subcontractors
EXHIBIT B Forms of Final Waivers of Lien for Contractor and Subcontractor

GENERAL CONDITIONS

ARTICLE 1.

Definitions

1.1 The following definitions shall apply in all Contract Documents (unless specifically provided to the contrary):

“Base Contract Work” for each Project means all work required under the Scope Documents, as in effect on the Work Order Date. Any Extra Work that was added to the Project by Discretionary HTFC Change shall also be deemed “Base Contract Work” after the effective date of such Discretionary HTFC Change.

“Benefitted Parties” shall include, but not be limited to, homeowners, municipalities, localities, other governmental entities, and all others that may be determined to be third party beneficiaries of the Construction Agreement between HTFC/GOSR and Contractor.

“Bond(s)” is defined in Section 7.2 of the Construction Agreement.

“Books and Records” is defined in Section 11.1.

“Cancellation Payment” is defined in Section 20.2.

“Change Order” means a written order issued by HTFC to Contractor after execution of the applicable Work Order, in a form approved by HTFC, authorizing or requiring: (a) Extra Work for a Discretionary HTFC Change pursuant to Article 21; (b) an extension of time under Article 18; (c) Deleted Work pursuant to Article 21; or (d) Any other change as authorized and agreed to by HTFC.

“Change Order Mark-Up” is defined in Section 21.8.

“City” means the city, town, village, or other jurisdiction in the State of New York in which the Project is located.

“Close-Out Requirements” means Contractor's obligations for closing out the Work and completing and furnishing to HTFC documentation of the Work as required under the Contract Documents.

“Code” means the building code and all other municipal or other local laws applicable to the Project, the Project Site, the Contract Documents, and/or the Work.

“Completion” is defined in Section 26.1.

“Completion Expense” is defined in Section 12.3.

“Completion Notice” is defined in Section 26.2.

“Construction Agreement” (or “Agreement”) means the Construction Agreement between HTFC and Contractor that precedes these General Conditions.

“Contract” means the legal agreement between Contractor and HTFC set forth in the Contract Documents.

“Contract Documents” means the following: (a) the Construction Agreement; (b) all Schedules to the Construction Agreement; (c) the applicable Work Order signed by HTFC and Contractor for the particular Project and all attachments thereto and Reference Documents referenced therein; (d) the General Conditions; (e) the Supplementary Conditions; (f) all other addenda; (h) any Change Orders; (i) the Invitation for Bid (IFB); (j) the responsive bid documents received from DRG; and (k) any other modifications to any of the foregoing signed by HTFC and Contractor.

“Contractor” is defined in the preliminary statement of the Construction Agreement.

“Damage” is defined in Section 8.1.

“Default” is defined in Section 12.2.

“Delay Notice” is defined in Section 18.1.

“Deleted Work” means any portion or aspect of the Work deleted or omitted from the Base Contract Work by HTFC.

“Direct Beneficiary Grant Agreement” means the Agreement in which the Benefitted Party(ies) agrees, among other things, to performance of the Work by Contractor, to allow access to the Project Site, and to comply with the terms and conditions of the Contract Documents in enforcing the Benefitted Party’s rights as third-party beneficiary thereunder.

“Discretionary HTFC Change” is defined in Section 21.2

“Employee” means an officer, director, official, trustee, manager, member, partner, employee, agent, servant, or representative.

“Environmental Law” means every federal, state, or local law, rule, or regulation governing the removal and remediation of Hazardous Materials.

“Event of Default” is defined in Section 12.1.

“Excusable Delay” means any delay in the Work resulting from any cause (during the Project) after the applicable Work Order Date and before Completion if such cause is beyond Contractor's reasonable control and was not caused by the fault of Contractor or any Subcontractor. Subject to the foregoing, Excusable Delay shall include delay caused by: (a) acts of God; (b) fire, earthquake, explosion, landslide, lightning or flood; (c) epidemic; (d) strikes (other than a strike caused by, or within the control of, Contractor); (e) lockouts by Persons other than Contractor; (f) riots, civil disturbance, insurrection, enemy action, terrorist acts, or war; (g) embargoes or blockades; (h) Extraordinary Conditions; (i) acts or omissions of HTFC; (j) the delay of any Government Entity in issuing any permits necessary to perform the Work (including delay due to incompleteness or other inadequacies in the Scope Documents); (k) injunctions, or orders of any Government Entity; and (l) temporary or permanent interruption of, or failure of any company to provide utilities to the Project or necessary in connection with the Work.

“Exhibits” means the Exhibits to these General Conditions.

“Extra Payment” means any payment due Contractor for Extra Work, computed in accordance with Article 21.

“Extra Work” means any Work in addition to the Base Contract Work which is required by a Discretionary HTFC Change. For the avoidance of doubt, “Extra Work” does not, in any case, include (a) development of details reasonably inferable from or implied by, but not explicit in, the Scope Documents; (b) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a drawing or specification; and (c) any matters resulting from, or attributable to, fault of Contractor or any Subcontractor.

“Extraordinary Conditions” means any and all Unforeseen Conditions which would not be expected to be known to Contractor on the basis of Contractor’s experience with projects similar to the Project or inspection of the Project Site and do not constitute a risk or obligation assumed by Contractor in the Contract Documents. For the avoidance of doubt, the following are Extraordinary Conditions: the existence of Hazardous Materials on the Project Site which were not disclosed in any reports or other documents furnished by HTFC to Contractor, including (a) asbestos-containing materials; (b) fuel tanks of any kind and/or any petroleum, or other gasoline, propane, or other fluids or substances within (or discharging or discharged from) any such fuel tanks; and/or (c) lead or lead-based paints.

“Fees-And-Costs” means the reasonable fees and expenses of attorneys, architects, engineers, investigators, expert witnesses, contractors, consultants, and other Persons, and costs of investigating claims, obtaining transcripts, printing of briefs and records on appeal, copying, and other reimbursable costs and expenses charged by any of the foregoing, and all other reasonable expenses of any actual or potential Legal Proceeding.

“Final Payment” is defined in Section 26.3.

“Five Day Notice” is defined in Section 12.2.

“Funding Source” is defined in Section 32.1.

“General Conditions” means these General Conditions and the Exhibits hereto and the Supplementary Conditions.

“GOSR” is defined in the preliminary statement of the Construction Agreement.

“GOSR Referee” is defined in Section 5.3 of the Construction Agreement.

“Government Entity” means the United States, the State of New York (and any other state in which the Work will take place), the City of New York, and any and every other agency, authority, department, board, bureau, court, commission, or instrumentality or political subdivision of any of the foregoing.

“Guarantee Period” is defined in Section 15.1.

“Hazardous Materials” means all toxic and hazardous materials, pollutants, chemicals, hydrocarbons, carcinogens, and other materials of every kind whatsoever which pose risk to human health or safety and as to which the presence, exposure, excavation, handling, demolition, removal, remediation, transportation, and/or disposition are subject to or governed by federal, state, and/or local prescription, prohibition, and/or regulation.

“HTFC” is defined in the preliminary statement of the Construction Agreement.

“Homeowner” means the particular “Homeowner” defined in the applicable Work Order.

“HUD” is defined in the preliminary statement of the Construction Agreement.

“Included Items” means fees, overhead, profit, general conditions, and administrative and/or indirect of every kind. References to Included Items in the Contract Documents mean that the relevant Work will be furnished without markup or other separate compensation for any of the Included Items.

“Indemnitee(s)” for each Project means Homeowner, the fee owner of the Project Site (if different than Homeowner), HTFC, GOSR, GOSR Referee, the Program Manager, New York State and U.S. Department of Housing and Urban Development (“HUD”); the Employees of each of the foregoing; all benefitted parties; occupants or users of the Project Site, if any other than Homeowner or other benefitted parties; the invitees and guests of such occupants and/or benefitted parties; pedestrians or other passersby, strangers, trespassers; Local governments, counties, municipalities, localities, other governmental entities having ownership, control or other interest in the Work; or others who may be determined to be third party beneficiaries of the indemnity and insurance provision herein.

“Insurance Limits” is defined in Schedule B to the Construction Agreement.

“Law” (or “Laws”) means each and every code, law, rule, regulation, requirement, order, judgment, decree, or ordinance of every kind issued by any Government Entity applicable to or affecting the Project, the Project Site, the Contract Documents, and/or the Work, including Code and Environmental Law.

“Legal Proceeding” means an action, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding of any kind.

“Lien” means any lien or claim (including those filed with any surety holding a Performance Bond or Payment Bond) of any kind against HTFC, Homeowner, Benefitted Party(ies), any Indemnitee(s), the Project, the Project Site, the Work, any monies due or to become due from HTFC to Contractor, and/or any other property of HTFC, for or on account of the Work.

“Line Item Breakdown” means a detailed written estimate or schedule of values in the form set forth in AIA Form G702 (Application for Payment) and AIA Form G703 (Continuation Sheet), showing the various operations comprising the Work and allocating percentages and dollar amounts of the Work Order Price to the labor, materials, and other elements of each such operation, prepared and submitted by Contractor and approved by HTFC before the submission of Contractor's first Requisition, to be submitted thereafter by Contractor with all Requisitions.

“Loss-And-Expense” means loss, liability, alleged liability, obligation, damage, delay, penalty, judgment, cost, fee, claim, charge, tax, or expense of every kind (including related Fees-And-Costs).

“Payment Bond” is defined in Section 7.2 of the Construction Agreement.

“Payment Schedule” is defined in the applicable Work Order.

“Performance Bond” is defined in Section 7.2 of the Construction Agreement.

“Person” means an individual person, a corporation, partnership, limited liability company, trust, joint venture, proprietorship, estate, Government Entity, or other incorporated or unincorporated enterprise, entity or organization of any kind whatsoever.

“Project” means the particular “Project” described in the applicable Work Order.

“Project Manager” is defined in the applicable Work Order and includes any successor designated by HTFC.

“Project Site” (or “site”) for each Project is defined in the applicable Work Order.

“Scope Documents” means the Scope Documents attached to the applicable Work Order and shall include any Contract Drawings attached to the applicable Work Order.

“Punch List Work” is defined in Section 26.2.

“Required Insurance” is defined in Schedule B to the Construction Agreement.

“Requisition” means a written submission by Contractor, on a form approved by HTFC, requesting payment for the Work or a portion thereof (including any Extra Payment to which Contractor is entitled).

“Salvage Credit” is defined in the applicable Work Order.

“Schedules” means the schedule(s) to the Construction Agreement.

“Separate Contractor” means any Person, other than Contractor and its Subcontractors, performing work or conducting other activities on the Project Site pursuant to an agreement with HTFC or any Benefitted Party(ies).

“Starting Date” for each Project is defined in the applicable Work Order.

“Subcontract” means an agreement between Contractor and a Subcontractor, or between two Subcontractors, as applicable.

“Subcontractor” means every Person (other than Employees of Contractor) employed by Contractor, or by any Person directly or indirectly in privity with Contractor (including every sub-subcontractor of whatsoever tier and anyone for whose acts they may be liable), for any portion of the Work, whether for the furnishing of labor, materials, equipment, services, or otherwise.

“Supplementary Conditions” is defined in Section 9.1 of the Construction Agreement.

“Surety” is defined in Section 7.3 of the Construction Agreement.

“Termination Date” is defined in Section 20.1.

“Termination Notice” is defined in Section 20.1.

“Unforeseen Conditions” means any and all covered or otherwise latent or hidden and materially adverse conditions of every kind whatsoever existing on or in the Project Site or on or in any building or structure on the Project Site which were not known to Contractor and were not disclosed in any Scope Documents, or other documents previously furnished to Contractor by HTFC or any other Person. For the avoidance of doubt, and supplementing other provisions of the Contract Documents which make similar reference, Contractor has agreed to assume, and does assume, the risk of all Unforeseen Conditions within the Work Order Price except for Extraordinary Conditions.

“Waiver of Lien” means, with respect to Requisitions prior to and upon Completion, a partial waiver and general release of Lien in the form set forth in Exhibit “A” and, with respect to Requisitions upon Completion, a final waiver and general release of Lien in the form set forth in Exhibit “B”.

“Work” means: (i) the Base Contract Work and (ii) everything required to be furnished and done by Contractor pursuant to the Contract Documents, including the employment and/or furnishing of all necessary labor, materials, equipment, supplies, tools, plant, scaffolding, transportation, insurance, temporary facilities, and other things and services of every kind necessary for the full performance and completion of Contractor's obligations (and including, also, all administrative, accounting, record-keeping, notification and similar obligations). “Work Approval Certification” means a signed certification by the Benefitted Party(ies), on a form provided by HTFC, that the Work under the applicable Work Order for which payment is sought by Contractor has been completed.

“Work Day” (or “Business Day”) means any day other than Saturday, Sunday, any federal legal holiday, or any day designated as a holiday under the collective bargaining agreement of a particular trade union.

“Work Order” is defined in the Introductory Statement to the Construction Agreement.

“Work Order Date” for each Project means the date of the applicable Work Order.

“Work Order Price” for each Project means the Work Order Price as defined in the applicable Work Order, as increased or decreased pursuant to specific provisions of the Contract Documents. For the avoidance of doubt, the Work Order Price for each Project shall be and remain separate; and the fixed-price line item costs within any particular Work Order shall be and remain separate; and Contractor may not apply savings under one Work Order or line item toward the costs of any other Work Order or line item.

1.2 Wherever used in the Contract Documents:

(a) “approve” or any of its derivatives or “consent” requires such approval or consent to be in writing or email, unless the particular provision specifically requires it to be in writing;

(b) the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation”;

(c) “day” means a calendar day unless the text specifies a Work Day;

(d) "delay" means any and every delay, obstruction, hindrance, interference, inefficiency, or loss of efficiency or productivity, of any kind;

(e) "fault" means fault, mistake, error, omission, inaccuracy, delay, mismanagement or negligence; and

(f) "at Contractor's expense" means at the sole and exclusive expense of Contractor.

1.3 Certain other words and phrases are defined elsewhere in the Contract Documents and have the same meaning in these General Conditions.

1.4 Wherever the Contract Documents impose any obligation on Contractor, or provide that Contractor shall be responsible for any action or matter, the Contract Documents shall be construed to mean, unless specifically provided to the contrary, Contractor shall perform or undertake the particular action or matter at Contractor's expense.

ARTICLE 2.

Work in Accordance with Contract Documents

2.1 Contractor hereby agrees to furnish, perform, and complete the Work required under this Contract in accordance with all provisions and requirements of the Contract Documents. Contractor agrees that the Work shall satisfy the requirements of the Contract Documents and shall (without limitation): (a) conform to the Scope Documents; (b) be of the quality required under the Scope Documents; (c) be free of Liens caused or created by Contractor or any Subcontractor; and (d) be constructed by means and methods complying with Laws.

2.2 Contractor agrees that the Work Order Price shall be Contractor's entire compensation and/or reimbursement for the performance of the Work and for all Included Items which will, might, or could be earned or incurred by Contractor and all Subcontractors under or by reason of the Contract Documents. Contractor agrees that amounts received by Contractor from HTFC shall be held in trust by Contractor pursuant to the Lien Law of New York State and shall be used first to pay for: (a) labor, materials, services, or equipment furnished in connection with the Work or any portion thereof (including materials or equipment stored offsite); (b) utilities furnished and taxes imposed; and (c) premiums on the Bonds and the Required Insurance.

2.3 Contractor shall secure (or cause to be secured), as part of the Work Order Price, all permits, licenses, certificates and approvals, if any, required under the Scope Documents or otherwise customary for Contractor's trade.

2.4 Contractor shall perform the Work in a good and skillful manner in accordance with current good standards of practice. Contractor shall be responsible for all applications, means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Work as required by the Contract Documents; subject, however, to HTFC's right to reject means and methods proposed by Contractor which (a) will constitute or create a hazard to the Work or to persons or property, or (b) will not produce finished Work in accordance with the requirements of the Contract Documents. Approval of (or failure to reject) any of Contractor's means and methods of demolition shall not relieve Contractor of any obligations under the Contract Documents.

2.5 Subject to HTFC's prior written approval (not to be unreasonably withheld), Contractor may use the Project Site for storage of materials and for temporary facilities, provided that Contractor makes all necessary arrangements for protecting, insuring, and securing such items within the Work Order Price.

ARTICLE 3.

Familiarity with Documents and Conditions; No Warranties as to Contract Documents

3.1 Contractor represents that Contractor has reviewed carefully the Scope Documents and all other Contract Documents, as existing on the applicable Work Order Date. Execution of each Work Order shall be deemed representation by Contractor that Contractor had carefully reviewed all such documents existing on the applicable Work Order Date. Contractor agrees that HTFC has not made, and shall not be deemed to have made, any representations or warranties with respect to the Scope Documents, whether as to the design or other adequacy or sufficiency thereof, or otherwise.

3.2 Execution of each Work Order shall be deemed representation by Contractor that Contractor represents that, before the applicable Work Order Date: (a) Contractor has inspected (and has had the opportunity to inspect) and is

familiar with the nature and location of the Project Site, other physical conditions relevant to the Work, and the jurisdiction and work rules of labor unions involved or to be involved in the Project; and (b) Contractor has become familiar with other applicable general and local conditions which may be material to Contractor's performance of the Work and the observable condition of and all existing buildings and structures (if any) on or adjacent to the Project Site; and (c) Contractor and has afforded its Subcontractors the opportunity to conduct such inspections and to become familiar with such general and local conditions.

3.3 Contractor shall not receive Extra Payment (or other additional compensation) with respect to any conditions or circumstances of any kind relating to or affecting the Project Site, including Unforeseen Conditions except for Extraordinary Conditions covered by an approved Change Order. Except for Extraordinary Conditions, Contractor assumes the entire risk of all conditions or circumstances relating to or affecting the Project Site, including Unforeseen Conditions.

3.4 Changes in Law occurring during the term of any applicable Work Order and/or reasonably expected to be effective immediately subsequent to completion of the services, which require a change in design of the Work, or in Contractor's means and methods, shall NOT be deemed Extra Work, and Contractor shall not receive any adjustment of the Work Order Price for any changes in Law. For the avoidance of doubt, a change in Law shall mean and include, also, a change in the interpretation or administration of any Law (including any changes or interpretations in rules, regulations, or administrative protocols or procedures of any kind).

ARTICLE 4.

Meaning of Documents

4.1 The Scope Documents and all other Contract Documents are intended to complement and supplement each other and to include or imply all items required for the proper execution and completion of the Work. The Scope Documents and other Contract Documents do not necessarily indicate or describe all items required for full performance of the Work. Contractor agrees to furnish without additional compensation all Work indicated on, or implied from, any one such Contract Document as if required by all. Contractor shall perform and complete the Work in accordance with the requirements of the Contract Documents (with all labor, materials, services, and other things included thereto, or usually performed in connection therewith, or reasonably inferable therefrom). In the event of any inconsistency among any of the Contract Documents, the Construction Agreement shall govern, followed by the remaining Contract Documents in the order of precedence determined by the order in which they appear in the definition of "Contract Documents" in Article 1. Any issues of inconsistency shall be resolved by the GOSR Referee.

4.2 Contractor represents that Contractor is fully familiar with the technical standards specified in the Contract Documents or otherwise applicable to Contractor's performance of the Work. References in the Contract Documents to technical standards shall be construed to mean the most recent published technical standards of the institute, organization, association, authority, or society specified. Unless otherwise specified to the contrary in the Contract Documents: (a) all references to technical standards shall include all revisions prior to the applicable Work Order Date; (b) such technical standards shall apply as if incorporated in the Contract Documents; and (c) if any revision of such technical standards occurs after the applicable Work Order Date and prior to completion of the applicable Work, Contractor shall notify HTFC and, if directed to do so by HTFC, shall perform the Work in accordance with the revised requirement. Where the Contract Documents require materials or apparatus to conform to specified technical standards, Contractor shall furnish HTFC, upon request, the manufacturer's written certification that such materials or apparatus conform to such technical standards. Failure of HTFC to request or reject any certification shall not release Contractor from full responsibility for the accurate and complete performance of the Work in accordance with the Contract Documents.

4.3 All indications, notations, schedules, or details in the Contract Documents specifically applicable to one or a number of similar situations, materials or processes, or shown as typical or representative, shall apply to all similar situations, materials, or processes, wherever appearing in the Work, unless the Contract Documents clearly require a contrary result. A typical or representative detail indicated on the Contract Documents shall be the standard of construction and material in all corresponding parts of the Work. Where necessary, and where inferable from the Scope Documents, Contractor shall apply such representative detail for all corresponding parts of the Work.

4.4 Any reference in the Contract Documents to materials, equipment, systems or supplies shall be construed to require Contractor to furnish the same in accordance with the grades and/or standards indicated in the Contract Documents. Where the Contract Documents do not specify any explicit quality or standard for materials or construction, Contractor shall use only construction and new materials of the quality appropriate to the Project; and the Contract Documents are to be

interpreted accordingly. The products and materials of manufacturers referred to in the Scope Documents are intended to establish the standard of quality and design required. Items other than those specified may be used if equivalent and approved by HTFC.

4.5 Contractor shall be responsible for all measurements required for execution of the Work to the position and elevation as required by the Contract Documents. Contractor shall follow dimensions set forth in the Contract Documents and in such cases shall not determine dimensions of the Work by scale. Before executing any Work, Contractor shall verify all measurements by inspection and examination at the Project Site. Contractor acknowledges that the Scope Documents do not necessarily show all variations in alignment, elevation, detail, etc., required to avoid interference or satisfy architectural and structural limitations; and Contractor assumes responsibility for the proper and correct performance of the Work.

4.6 Contractor shall be responsible for all measurements, load and other stress tests required for execution of the Work. Before executing any Work, Contractor shall verify all measurements by inspection and examination at the Project Site.

ARTICLE 5.

Subcontractors

5.1 Each Subcontractor to be engaged by Contractor shall be subject to HTFC's prior written approval. Contractor shall have full responsibility for every portion of the Work furnished by any Subcontractor and for every act and omission (whether willful, negligent, or otherwise) of every Subcontractor and such Subcontractor's Employees. All Work, acts or omissions of every Subcontractor and such Subcontractor's Employees shall be deemed those of Contractor for all purposes of the Contract Documents.

5.2 If HTFC disapproves any proposed Subcontractor, Contractor shall promptly propose a substitute Subcontractor for the applicable Work at no additional cost or give written notice to HTFC that Contractor itself will perform the same Work. Failure to disapprove any Subcontractor shall not: (a) excuse Contractor from complying in all respects with the Contract Documents; or (b) imply that HTFC approves Contractor's or any Subcontractor's proposed staffing or scheduling of the Work or agrees that Contractor or any Subcontractor has the capacity or ability to complete the Work.

5.3 Nothing contained in the Contract Documents shall create any relationship of contract or agency between HTFC and any Subcontractor, notwithstanding HTFC's consent to any Subcontractor. Contractor acknowledges and agrees that HTFC shall have no obligation to supervise or deal with any Subcontractor or its Employees or to pay any Subcontractor or its Employees. No dealings of any kind whatsoever between HTFC or any Benefitted Party(ies) and any Subcontractor shall be deemed a waiver of the foregoing by HTFC unless HTFC (at HTFC's election) specifically agrees otherwise in writing.

5.4 Contractor shall require all Subcontracts to be in writing and to comply with the requirements of this Article 5. Each Subcontract shall include a provision under which the Subcontractor agrees that the Subcontract shall be assigned to HTFC, at HTFC's written election, upon a termination of Contractor's rights to perform the Work under Article 12 or Article 20 (such assignment to become effective upon HTFC's giving written notice to the Subcontractor). Each Subcontract shall contain the same terms and conditions as to method of payment for Work and as to retained percentages as are set forth in this Contract, unless HTFC agrees otherwise in writing. Each Subcontract shall incorporate these General Conditions (and all other Contract Documents which apply generally to all Work or specifically to the Work covered by such Subcontract, and specifically the Supplementary Conditions) and shall provide that the Subcontractor shall be obligated to Contractor thereunder to the same extent as Contractor is obligated to HTFC for the Work of such Subcontractor. Upon HTFC's written request, Contractor shall deliver to HTFC a true and complete copy (or counterpart original) of the signed Subcontract between Contractor and each Subcontractor (and any modifications thereof). If Contractor desires to make a substitution for any Subcontractor, the proposed substitution shall be subject to all other requirements of this Article.

5.5 No Subcontractor shall be permitted on the Project Site unless Contractor has complied with Sections 5.2 and 5.4 of these General Conditions. Contractor shall bear all risk of delay resulting from Contractor's failure to submit required information, or obtain HTFC's decision concerning acceptability, within sufficient time to enable the applicable Subcontractor to commence Work when scheduled.

ARTICLE 6.

Indemnification; Release of Liability

(a) 6.1 Contractor hereby agrees to defend (using counsel acceptable to HTFC), indemnify and hold harmless HTFC and the State of New York, each and every Indemnitee, their respective successors, affiliates or assigns, and any of their employees, officers, directors, attorneys, consultants, agents, managers, representatives, and affiliates (collectively, "HTFC"), from and against (and to pay the full amount of) any and all Loss-And-Expense, claims, demands, damages, judgments, liabilities or alleged liabilities, costs of any form or nature whatsoever (including reasonable attorney's fees), whenever asserted or occurring, resulting from, arising out of, or in consequence of any action or cause of action in connection with this Agreement, the Services or Scope of Services, or any Work Orders, which "HTFC" or any Indemnitee may suffer, incur or pay out, or which may be asserted against "HTFC" or any Indemnitee in whole or in part, by reason of, or in connection with, the following including, but not limited to: any bodily injury, sickness, disease or death sustained by any persons, employees, agents, invitees and the like, occurring in connection with (or arising out of, or resulting from) the Work and/or any willful or negligent acts or omissions of Contractor or any Subcontractor, and whether occurring on the Project Site or elsewhere;

(b) any damage to or destruction or loss of any property, including any third party property and any property of HTFC and any property of others in the care, custody and control of Contractor, arising out of, or resulting from the Work and/or any willful or negligent acts or omissions of Contractor or its Employees or any Subcontractors, and whether occurring on the Project Site or elsewhere;

(c) any loss of benefits under any manufacturer's guarantee, warranty or service agreement resulting from the fault of Contractor or any Subcontractor;

(d) any materially untrue or incorrect statement or representation of Contractor or Subcontractors in any Requisition, or in any other document submitted by Contractor with respect to the Work, the Project, or the Contract Documents (or for purposes of securing the Construction Agreement);

(e) any failure of Contractor or subcontractors to comply with Laws;

(f) any failure of Contractor or subcontractors to secure and maintain Required Insurance, or any Indemnitee's loss of coverage under any Insurance by reason of acts or omissions of Contractor;

(g) any amounts payable under worker's compensation or similar Laws not otherwise covered under (a) or (b) above in connection with (or arising out of, or resulting from) Contractor's performance or failure to perform the Work, or any other willful or negligent acts or omissions of Contractor or any Subcontractor attributable or relating thereto; and/or

(h) any claim in the nature of patent, copyright, or trade secret infringement or unfair competition, or other proprietary right, arising out of Contractor's or subcontractor's unauthorized use of any intellectual property or other similar protected material;

(i) any injuries or damages resulting from defects, malfunction, misuse, etc of Contractor-provided equipment and materials;

(j) any violations of this Agreement by, or the conduct (including any acts, omissions, malfeasance, or willful misconduct) of, Contractor, subcontractors or suppliers of any level or tier, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable

6.2 Contractor shall defend (using counsel acceptable to HTFC) any claim, demand, allegations of liability, or Legal Proceedings (collectively referred to herein as "Legal Proceedings") commenced against any Indemnitee concerning any matter covered by any indemnity under Section 6.1. If Contractor fails to defend diligently any such Legal Proceeding, HTFC shall have the right (but no obligation) to defend the same at Contractor's expense. Contractor shall not settle any such Legal Proceeding without HTFC's prior written consent. Contractor shall give HTFC copies of documents served in any such Legal Proceeding and, whenever requested by HTFC, shall advise promptly as to the status of such Legal Proceeding. Contractor shall notify HTFC promptly of every Legal Proceeding or claim of which Contractor has knowledge which may be covered by any indemnity under this Article 6 and/or which may be covered by any Required Insurance.

Contractor shall also give timely notice of such Legal Proceedings and claims to each insurer which has issued an applicable policy of Required Insurance, identifying all Indemnitee(s) involved.

6.3 Contractor's indemnities and obligations under Sections 6.1 and 6.2 shall cover and include the Fees-And-Costs paid or incurred by HTFC in connection with any matter and amount referred to in Sections 6.1 and 6.2, including any litigation or any other dispute resolution costs, together with the Fees-And-Costs paid or incurred by any Indemnitee to enforce this Article and Contractor's obligations hereunder (and Contractor agrees specifically that Contractor shall pay HTFC the Fees-And-Costs paid or incurred by HTFC to enforce this Article and Contractor's indemnities and obligations hereunder). Contractor shall pay such Fees-And-Costs upon demand from time to time.

6.4 Contractor's indemnities and obligations under the Contract Documents shall not be limited or defined by the amount of Required Insurance or by any limitations or restrictions on the amount or type of damages, compensation or benefits payable to, by or for Contractor under workers' compensation acts, disability benefit acts or any other Laws relating to employee benefits. No Indemnitee's right to indemnity under the Contract Documents shall be diminished, waived, or discharged by the exercise of any other remedy allowed under the Contract Documents or by Law.

6.5 This Article 6 and the obligations of Contractor hereunder shall survive Completion, all payments to Contractor, and any termination of Contractor's right to perform the Contract.

6.6 Contractor assumes the risk of, and hereby releases all Indemnitee(s) from and with respect to, any and all matters and things covered by Contractor's obligations under this Article 6; provided, however, that Contractor shall not be required to indemnify against Loss-And-Expense as to any Indemnitee to the extent that such Loss-And-Expense is the result of the negligence or willful misconduct of such Indemnitee.

6.7 If any Subcontractor or any other Person claiming to have been employed directly or indirectly by or through Contractor or any Subcontractor files a Lien (unless as a result of HTFC's failure to pay an undisputed amount properly due to Contractor under this Contract), Contractor shall satisfy, remove or discharge such Lien at Contractor's expense by bonding, payment or otherwise within 30 days after notice to Contractor of the filing thereof. If Contractor fails to do so, HTFC may satisfy, remove or discharge such Lien; and, at HTFC's election: (a) HTFC may deduct the cost thereof (including all applicable Fees-And-Costs) from Contractor's next succeeding Requisitions (or may invalidate any previously approved but unpaid Requisitions) until HTFC recoups the total thereof; or (b) Contractor shall pay the same to HTFC upon demand.

6.8 It is expressly understood and agreed that the risk of loss for property damage during the course of construction or other work passes to HTFC only after completion of the work enumerated in this Agreement, Services or scope of Services or any Work Orders. Accordingly, all of the indemnification provisions as set forth herein shall also apply to any losses sustained prior to the passing of risk of loss to HTFC. This clause shall survive indefinitely the termination of this Agreement for any reason.

ARTICLE 7.

Access to Work; Inspections; Testing; Uncovering of Work

7.1 During the progress of the Work through Completion, Contractor shall at all times afford HTFC and other Persons designated by HTFC, access to the Work and every reasonable, safe, and proper facility for inspecting or examining all Work at the Project Site or, if elsewhere, at the place of preparation. Contractor shall secure and deliver to HTFC promptly all certificates of inspection, test reports, work logs, or approvals with respect to the Work as and when required by the Contract Documents (or by Laws which place responsibility for the same on Contractor).

7.2 All tests or inspections required by Law ("Controlled Inspections") shall be at Contractor's expense within the Work Order Price (and Contractor shall engage, or provide the services of, a licensed engineer, at Contractor's expense, for such purpose). Contractor shall arrange and coordinate any Controlled Inspections and notify HTFC sufficiently in advance of the need and time for such Controlled Inspections. Additionally, Contractor shall arrange, coordinate and conduct all tests or inspections specifically required of Contractor or any Subcontractor under the Contract Documents (or which are otherwise required by any Laws which place the responsibility for conducting such test or inspection on Contractor) which are not Controlled Inspections. Contractor shall give three Work Days advance notice of the scheduled time for a test or inspection to HTFC and any consultants or other Persons who will be affected by (or who should necessarily or properly be

present for) such test or inspection. Contractor shall give HTFC copies of all inspection certificates from Controlled Inspections or other tests and inspections within five days after Contractor receives the same.

7.3 HTFC may at any time conduct (or cause to be conducted) such on-site inspections and such other tests as HTFC deems necessary or desirable to ascertain whether the Work complies with the Contract Documents. HTFC will pay for a test or inspection requested by HTFC (and not required under Section 7.2) as Extra Work under Article 21, unless such test or inspection reveals a failure of the Work to comply with the Contract Documents or Laws, in which event Contractor shall bear all expenses of such inspection or test. Should Contractor fail to adequately coordinate with the applicable inspector or testing entity, Contractor shall be back-charged for any additional Fees-And-Costs incurred by HTFC for re-inspection or re-testing.

7.4 Contractor shall secure and deliver to HTFC promptly all certificates of inspection, test reports, work logs, or approvals with respect to the Work as and when required by the Contract Documents (or by Laws which place responsibility for the same on Contractor).

ARTICLE 8.

Casualty and Other Damage to the Work

8.1 In the Contract Documents, "Damage" (or "Damaged") means and includes damage, destruction, or loss resulting from fire, weather, other casualty, vandalism, theft, negligent or intentional acts or omissions of Contractor or a Subcontractor, and/or any other cause whatsoever. From the applicable Work Order Date until Completion, Contractor shall use care and diligence, and shall take precautions, to protect the Work and other property of HTFC and/or other Persons from Damage. Contractor acknowledges that HTFC and Benefitted Party(ies) shall NOT carry any builder's risk or other insurance that would cover any such Damage. Contractor assumes the risk of all Damage to the Work or the Project and agrees that any restoration, remediation, additional protection, and/or any change in Contractor's logistics or means and methods of conducting the Work required by reason of Damage shall be at Contractor's expense.

8.2 Contractor shall notify HTFC of any Damage to the Work, or any accidents on the Project Site, as promptly as reasonably possible after Contractor learns of the same; and, within ten days after learning of any occurrence, Contractor shall submit a full and complete written report to HTFC. Contractor shall also submit to HTFC copies of all accident and other reports filed with (or given to Contractor by) any insurance company, adjuster, or Government Entity.

ARTICLE 9.

Ownership of Drawings and Other Protected Material

9.1 The Scope Documents, and all drawings, notes and other documents of any kind issued by HTFC in connection with the Contract, the Work Order or the Work, and all samples, Shop Drawings, and other submittals prepared by Contractor or any Subcontractor in connection with the Work or the Project, together with all other Books and Records, and all rights in the foregoing (including rights of use, copyright, and trademark), shall be and remain the sole and confidential property of Benefitted Party(ies) (whether or not HTFC undertakes, terminates, or completes the Work, or this Construction Agreement is terminated for any reason whatsoever) and, for the avoidance of doubt, Contractor hereby assigns all rights it may have in the foregoing to Benefitted Party(ies).

9.2 Notwithstanding anything to the contrary in Section 9.1, HTFC and Benefitted Party(ies) shall not own but shall have a royalty-free perpetual license to use (or permit use of) any intellectual property or other similar protected material prepared as part of the Work for any purpose related to the Project. If Contractor does not have the right to grant such a license with respect to such material prepared by third parties, Contractor shall notify HTFC promptly.

ARTICLE 10. Contractor's Representatives and Personnel; Contractor Responsible for Labor Matters, Coordination, Etc.

10.1 Contractor has designated in Schedule C to the Construction Agreement one or more representatives who have full authority, individually, to act for Contractor under and with respect to the Contract Documents. The acts of each such representative shall fully bind Contractor; and HTFC shall be fully protected in relying upon, or dealing with, any one of such designated representatives. Contractor is an independent contractor and not an Employee of HTFC. Contractor and all Persons assigned to the Work by Contractor shall perform in a manner which is skillful and otherwise appropriate and shall cooperate with HTFC and its Employees, consultants, contractors and representatives. If any Person assigned to the

Work by Contractor is unacceptable, in HTFC's judgment, Contractor shall terminate the assignment of such Person immediately (and secure an acceptable substitute, if required) without any increase in the Work Order Price.

10.2 Contractor shall be responsible for establishing a safety program and security as appropriate for each Project. Contractor shall (and shall cause each Subcontractor to) (a) use care and diligence to protect the Work and the Project Site and Benefitted Party(ies) from theft, vandalism, and other unlawful or inappropriate activities, and (b) in furtherance thereof, in compliance with Laws, perform background screening of all employees entering the Project Site. Costs of safety and security required under this paragraph shall be borne by Contractor, at Contractor's expense, within the Work Order Price.

10.3 Contractor acknowledges and agrees that HTFC or Benefitted Party(ies) may award contracts to Separate Contractors for other activities or work at the Project Site. Contractor agrees: to cooperate reasonably and to coordinate with any Separate Contractors so as to avoid disputes and delays; to allow Separate Contractors, upon reasonable advance notice during normal working hours, to review pertinent documents in Contractor's possession (including any Contract Documents or Shop Drawings and samples which will or may affect the work of such Separate Contractor); if Contractor controls the Project Site, to afford Separate Contractors access to the Project Site (provided that all Separate Contractors shall coordinate their work with Contractor while on the Project Site); and to notify promptly any Separate Contractor, HTFC and Benefitted Party(ies) of any problems in the Separate Contractor's work that are reasonably likely to cause damage or delay to Contractor and to cooperate with the Separate Contractor to mitigate the effects of the problem.

ARTICLE 11.

Books and Records

11.1 Contractor shall keep and maintain the following (the "Books and Records"): (a) complete accounts and cost records of all payments by HTFC to Contractor and/or by Contractor to any Subcontractor or other Person in connection with the Work, including records of all Extra Work and Disputed Work performed; (b) copies (and originals, as appropriate) of all documents of any kind prepared, issued, or received by Contractor in connection with the Work or the Project; (c) all payroll records, receiving documents, time books, job diaries and reports, cost analyses, cancelled checks, sales or excise tax filings and returns (or exemptions therefrom), other government filings, and other documents showing acts or transactions in connection with (or relating to or arising by reason of) the Work, the Contract, or any Subcontract; and (d) one complete set of the Scope Documents marked to record all changes by Contractor during the Work and specifying the applicable Change Orders. Contractor shall, upon written notice from HTFC, produce any or all Books and Records for examination, audit, and/or copying, during regular business hours, at Contractor's office, by a representative of HTFC. Contractor shall keep and maintain all Books and Records connected with this Agreement in accordance with GOSR's Record Retention Policy as follows:

The State has determined that it will apply a more stringent policy relative to the retention of documents. This more stringent requirement also ensures the State's compliance with the requirements noted in the CPD Notice issued February 11, 2014. State grantees and/or Contractors (as applicable) shall be required to retain all financial records, supporting documents, statistical records, and all other pertinent records and documents (collectively, the "Records") (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) six (6) years after the closeout of a CDBG-funded project pursuant to 42 USC 12707(a) (4) and New York Civil Practice Law and Rules §213, whichever may be longer. Notwithstanding the latter, in the event that litigation, claims, audits, negotiations, or other actions that involve any of the records cited commences prior to the retention period, then all such records must be retained until completion of the actions and resolution of all issues, or for the retention period, whichever occurs later.

ARTICLE 12.

Events of Default; Determination and Consequences of Default

12.1 "Event of Default" means any of the following:

- (a) Contractor fails to commence Work on the Starting Date, subject to Excusable Delays;
- (b) Contractor abandons the Work in violation of Contractor's obligations under the Contract Documents;

(c) Contractor reduces Contractor's work force to a number which HTFC reasonably believes would be insufficient to complete the Work and Contractor fails, after five days' written notice from HTFC, to increase the work force to a number sufficient so as to complete the Work;

(d) Contractor fails to secure and maintain all Required Insurance in accordance with the Contract Documents;

(e) Contractor does not achieve Completion on or before the Completion Date (as extended under Article 18);

(f) the unpaid balance of the Work Order Price is clearly insufficient to complete the Work and to pay all Liens which are Contractor's responsibility under Section 6.7 (and not yet bonded or discharged), and Contractor fails to confirm in writing, after seven days written notice from HTFC, that Contractor shall complete the Work in accordance with the Contract Documents;

(g) Contractor: (i) seeks, consents to, acquiesces in, or suffers the appointment of, a receiver of all or a material part of Contractor's property or income; (ii) admits in writing Contractor's inability to pay Contractor's debts as they mature; (iii) makes a general assignment for the benefit of creditors; (iv) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or an advantage under any present or future federal, state or other law relating to bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation or similar relief; or files an answer admitting the material allegations of a petition filed against Contractor in any proceeding under any such law; and/or (v) is adjudicated an insolvent or is subject to an involuntary petition in bankruptcy, and such adjudication or filing is not set aside or terminated within 30 days;

(h) an attachment is levied or a judgment is executed against all or any material part of Contractor's property or income and the same is not discharged within 30 days;

(i) Contractor (or the chairman or president, or any vice president, treasurer, or any shareholder owning more than twenty percent (20%) of Contractor's issued and outstanding capital stock, or the sole proprietor of Contractor or any member, manager, general partner or joint venturer of Contractor) is indicted for an alleged felony related or pertaining to the business activities of Contractor; and/or

(j) except as covered by (a) through (i) above, Contractor fails to perform or observe any other term, covenant, condition and provision of the Contract Documents for twenty-one (21) days after written notice from HTFC specifying the nature of Contractor's failure; provided, however, that if curing or correcting such failure requires Work to be performed, acts to be done, or conditions to be removed which cannot be performed, done, or removed within such twenty-one (21) days, no Event of Default shall be deemed to have occurred if Contractor: (i) gives written notice to HTFC within such twenty-one (21) days acknowledging that Contractor intends to take all actions necessary to remedy the matter involved with due diligence; (ii) promptly commences to cure and correct the matter involved and diligently continues to prosecute the same; and (iii) cures and corrects the matter involved within a reasonable time, taking into account the relevant circumstances.

12.2 Upon the occurrence of any Event of Default (following the applicable notice and/or cure period specified in Section 12.1 for such Event of Default, if any), HTFC may give written notice (the "Five Day Notice") to Contractor. If Contractor still fails to cure or correct the specified default within five days after HTFC gives the Five Day Notice, Contractor shall be in "Default" and thereupon HTFC may do any or all of the following, in any sequence: (a) terminate Contractor's right to perform the Work, in whole or in part, to the extent specified by HTFC; and/or (b) at Contractor's expense, take (or cause to be taken) any and all actions and incur any costs which HTFC deems necessary or desirable (in HTFC's judgment) to investigate and/or cure all or any portion of such Default. For this purpose, HTFC may: (i) take possession of and use (or permit any Person described in (ii) or (iv) below to take possession of and use) any or all materials, tools, plant, equipment, supplies and/or facilities used or to be used by Contractor for the Work (whether on or off the Project Site) to the fullest extent permitted by Law; (ii) employ any architect, engineer, attorney, accountant, or other consultant, or any contractor or other Person, on terms satisfactory to HTFC (in HTFC's judgment), with or without competitive bidding, to advise and consult, to furnish services, labor, materials, tools, plant, equipment, supplies, transportation, facilities, and/or any other matters of any kind necessary or desirable (in HTFC's judgment) to complete the Work, or otherwise to cure Contractor's Default; (iii) repair or replace any Work or part of the Project, or Work of any other contractor, damaged, removed, or

uncovered by reason of Contractor's Default, or the curing and correction thereof; (iv) rebid, re-let, or otherwise award the Construction Agreement or any portion of the Work to any other Person (whether by negotiation, competitive bidding, or otherwise); and/or (v) compel the Surety under the Performance Bond (if any) to perform Contractor's obligations under the Contract Documents. Contractor and each Surety under the Bonds (if any) shall remain liable under the Contract Documents, whether or not HTFC terminates Contractor's right to perform the Construction Agreement (either in whole or in part) or takes (or omits to take) any other action with respect to any Default.

12.3 Contractor shall be liable to HTFC for all Loss-And-Expense paid or incurred by HTFC in connection with any and all actions and matters under Section 12.2 (collectively, "Completion Expense"). HTFC shall determine the amount of the Completion Expense from time to time, and: (a) to the extent the Completion Expense exceeds the portion of the Work Order Price properly attributable to the remaining Work being completed or corrected, such excess amount: (i) shall be deducted from any unpaid balance of the Work Order Price or other amounts due Contractor hereunder, to the extent of such balance; and (ii) Contractor shall pay HTFC any amount exceeding the unpaid balance of the Work Order Price, upon demand; and (b) upon Completion of the Work, but only to the extent the entire Completion Expense is less than the unpaid balance of the Work Order Price, HTFC shall pay Contractor any balance of the Work Order Price still due and unpaid for Work actually performed by Contractor, without interest, after Contractor has complied with the requirements of Article 28.

12.4 If HTFC terminates Contractor's right to perform the Work and if it is determined subsequently for any reason that an Event of Default did not occur or that Contractor had cured such Event of Default in a timely manner, then HTFC's termination of Contractor's right to perform the Work shall be deemed to have been an elective termination of this Construction Agreement pursuant to Article 20 and HTFC shall pay Contractor the Cancellation Payment specified in Section 20.2.

12.5 The rights and remedies of HTFC under this Article are not intended to be exclusive. Each right and remedy shall be cumulative and shall be in addition to all other rights and remedies given HTFC under the Contract Documents or available at law or in equity.

12.6 This Article is intended to supplement and not limit any provisions of the Supplementary Conditions dealing with the subject matter hereof.

ARTICLE 13.

Legal Proceedings by Contractor; Governing Law

13.1 Contractor shall not bring any Legal Proceeding against HTFC or any other Indemnitee under the Contract Documents, or with respect to any aspect of the Work, unless Contractor commences the same no later than 365 days after: (a) Completion; (b) any termination of Contractor's right to perform the Work under Article 12 or Article 20; and/or (c) any abandonment of the Project or purported termination by Contractor based upon any alleged default by HTFC. The Contract Documents shall be construed and enforced in accordance with, and governed by, the laws of the State of New York (without regard to principles of conflicts of laws). In the event of any Legal Proceeding between the parties concerning the Contract Documents (or any matter pertaining to or arising under the Contract Documents) which results in a judgment final beyond appeal, the prevailing party shall be entitled to reimbursement from the losing party, upon demand, for all Fees-And-Costs of such Legal Proceeding paid or incurred by the prevailing party. Contractor and HTFC agree that any legal action with respect to this Contract (including all defenses to any such legal action and all counterclaims or cross-claims therein) shall be brought and maintained only in the Supreme Court of the State of New York, New York County; and Contractor and HTFC accept (and submit to) the jurisdiction of such court.

ARTICLE 14.

No Waivers; No Third-Party Rights

14.1 The Contract Documents may not be modified or amended (or any term or provision waived or discharged) except in writing signed by the party against whom such amendment, modification, waiver or discharge is intended to be effective or except as elsewhere provided in the Contract Documents. Except and unless as elsewhere provided in the Contract Documents (or unless otherwise specifically agreed by HTFC in writing with respect to a particular matter), no action, failure to act, course of dealing or delay of HTFC shall constitute a waiver by HTFC of Contractor's compliance with any term or provision of the Contract Documents or shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

14.2 Unless another provision of the Contract Documents provides specifically to the contrary, nothing in the Contract Documents, express or implied, is intended: (a) to confer on any Person other than HTFC, Benefitted Party(ies) or Contractor any rights, obligations, liabilities or remedies; or (b) to waive any claim or right of Contractor, HTFC, Benefitted Party(ies) or any Indemnitee against any other Person.

ARTICLE 15.

Correction of Work; Guarantees

15.1 Prior to Completion and at any time during the Guarantee Period when HTFC or Benefitted Party(ies) gives written notice to Contractor, Contractor shall correct promptly all Work which is incorrect, defective, incomplete, omitted, or not otherwise in compliance with the Contract Documents. Unless a longer period is otherwise set forth in the Contract Documents, "Guarantee Period" means the period commencing on the date of Completion and ending on the later of (a) 365 days following such date or (b) 180 days after the completion of the specific corrective action. If Contractor fails to commence required action under this Article within ten (10) days after written notice from HTFC or Benefitted Party(ies), or if Contractor does not thereafter prosecute such action diligently to completion, HTFC or Benefitted Party(ies) may undertake the necessary corrective action itself or through other Persons at Contractor's expense. Any costs of corrective action for which Contractor is responsible under this Article shall be deducted from the unpaid balance of the Work Order Price (if any) or otherwise paid by Contractor upon demand. This Article is intended to supplement (and not to limit) Contractor's obligations under other provisions of the Contract Documents and under Laws, including Article 2.

ARTICLE 16.

Resolution of Disputes

16.1 If Contractor, HTFC or Benefitted Party(ies) dispute any action of the other relating to any issue arising under this Construction Agreement (or under the Direct Beneficiary Grant Agreement), and if they fail to resolve their dispute within fifteen (15) days after written notice from one party to the other advising of the dispute and specifying this Article, either party may submit a notice of dispute to the GOSR Referee. Each such submission to the GOSR Referee shall specify in reasonable detail:

- (a) the nature of the dispute and/or any information or interpretation requested by the party (the "petitioner") giving notice to the GOSR Referee; and
- (b) the petitioner's proposal for resolving the dispute.

16.2 The petitioner shall include with such request all documents and other materials which the petitioner deems relevant. The petitioner shall give copies to the other party(ies) (the "respondent") of all documents and other materials submitted by the petitioner to the GOSR Referee.

16.3 The GOSR Referee shall review each matter submitted and shall allow the respondent an opportunity to submit a written statement of the respondent's position (together with any documents or materials which the respondent deems relevant) within thirty (30) days after the respondent receives the petitioner's submission of documents under Section 16.2. The GOSR Referee shall also confer with both parties together to discuss the dispute and hear argument and may allow either party to submit a further written statement (or statements) of its position. In considering or rendering any decision, the GOSR Referee shall construe, interpret, and apply the Contract Documents or Direct Beneficiary Grant Agreement strictly in accordance with their terms. The GOSR Referee shall deliver a written decision to Contractor, HTFC and Benefitted Party(ies) as promptly as possible, but no later than thirty (30) days after the last document submission by the parties to the GOSR Referee (or conference with both parties, if later). Contractor, HTFC and Benefitted Party(ies) shall comply promptly with decisions of the GOSR Referee.

16.4 A decision of the GOSR Referee shall be conclusive and binding on Contractor, HTFC and Benefitted Party(ies) with full effect as the decision of an arbitrator under New York law.

16.5 HTFC, Contractor and Benefitted Party(ies) shall each bear its own expenses of any proceeding before the GOSR Referee. There shall be no charge for the fees or expenses of the GOSR Referee.

16.6 If the GOSR Referee is disbanded or is unable to serve, GOSR shall designate a successor within thirty (30) days after application by a petitioner. In such event the time periods for issuance of a determination by the GOSR

Referee under this Article shall (if necessary) be postponed day-for-day pending the appointment (and agreement to serve) of the successor GOSR Referee.

16.7 A Surety issuing any Bond with respect to this Construction Agreement shall be bound by decisions of the GOSR Referee to the same extent as Contractor. Moreover, by issuing its Bond such Surety shall be deemed to have agreed that submission of any matter to the GOSR Referee, and/or any decision or other action of the GOSR Referee, shall not discharge, release, amend, or waive such Bond or any rights of HTFC or Benefitted Party(ies) thereunder.

16.8 Contractor shall not stop Work during the pendency of any dispute. Following a decision of the GOSR Referee, each party (as applicable) shall comply immediately with such decision.

16.9 Contractor and Benefitted Party(ies) acknowledge and agreed that the members of GOSR Referee may be an employee of, or contractor with, HTFC or of another agency of the State of New York. Nonetheless, Contractor and Benefitted Party(ies) each waives any actual or apparent conflict of interest and accepts the GOSR Referee as the Person to perform the functions which are specified for the GOSR Referee under this Article.

ARTICLE 17.

Commencement of Work; Time

17.1 Contractor shall commence Work on the Project Site, no later than the Starting Date. Subject to Excusable Delays, time is of the essence for Contractor's Completion of the Work on or before the Completion Date.

17.2 If at any time the Work is likely to be delayed for any reason, or if HTFC otherwise desires to accelerate the Work for any reason, HTFC may give written notice requiring Contractor to (a) increase the number of workers and/or the amount or types of machinery, tools, equipment, or materials employed by Contractor in or for the performance of the Work; and/or (b) schedule and conduct additional lawful work shifts. Contractor shall undertake immediately all such action which HTFC so requires in order to accelerate the Work, subject to availability of labor and materials. Costs of additional labor, machinery, tools, equipment and/or materials, if any, required under this paragraph shall be borne by Contractor, at Contractor's expense, within the Work Order Price where the Work has been delayed by Contractor (as extended for Excusable Delays) or otherwise shall be borne by HTFC as an Extra Payment computed in accordance with Article 21. If HTFC and Contractor do not agree as to the cause of any delay in the Work, or if Contractor disputes the necessity of accelerating the Work, nevertheless Contractor shall comply with HTFC's requirements and shall continue to prosecute the Work. Whether or not HTFC exercises the same, HTFC's right to accelerate performance of the Work under this Section shall not limit, modify or waive any of HTFC's rights or remedies under the Contract Documents.

ARTICLE 18.

Extensions of Time

18.1 Contractor shall be entitled to extensions of the Completion Date only for Excusable Delays, subject to compliance with the conditions and requirements of this Article. Contractor may request an extension of time by giving a written notice to HTFC which briefly describes the delay and estimates the duration of the delay (a "Delay Notice") within ten (10) days (unless a different time period is expressly identified in the applicable Work Order) after Contractor receives notice or otherwise becomes aware that the Excusable Delay has commenced or can be expected to commence. Contractor hereby waives and releases any right to an extension of time as to which Contractor does not give a Delay Notice as specified in this Article. Subject to the foregoing, if Contractor is entitled to a requested extension of time, HTFC shall issue a Change Order after timely receipt of the Delay Notice. Contractor shall not receive an extension of time under this Article to the extent that Contractor would have been delayed concurrently by any fault of Contractor.

ARTICLE 19.

Suspensions of Work

19.1 HTFC may order Contractor, by written notice at any time, to stop the Work (or any part thereof) for any period or periods specified by HTFC, for any reasons (i.e., with or without cause). HTFC's order shall specify the date on which Contractor shall stop the Work. Contractor shall resume the Work thereafter if and when HTFC so orders. Contractor shall receive an extension of time as an Excusable Delay for any period of stoppage ordered by HTFC under this Article unless the suspension was necessary by reason of or attributable to Contractor's fault.

19.2 Extensions of time under Article 18, and payment of any amounts that may be due under Section 27.1 for a suspension by HTFC, shall be construed as full consideration to Contractor, and as a release of HTFC by Contractor (and all Persons claiming by, through and/or under Contractor), with respect to the particular stoppage of the Work.

ARTICLE 20.

Elective Termination By HTFC

20.1 HTFC may terminate Contractor's right to perform the Contract in whole or in part at any time after the date of the Construction Agreement for any reason, with or without cause, by at least ten (10) days' prior written notice to Contractor (the "Termination Notice") specifying the effective date of such termination (the "Termination Date") and the extent to which performance of the Work is terminated.

20.2 Upon a termination under this Article and after Contractor complies with Article 28, Contractor shall be entitled to a "Cancellation Payment" consisting of the following: (a) all amounts (including any Extra Payments) due, but not yet paid, Contractor under the Contract Documents for Work completed prior to the Termination Date; (b) direct out-of-pocket costs of any supplies, materials, machinery, equipment, facilities, or other property, in each case specially fabricated or purchased by Contractor or any Subcontractor pursuant to the Scope Documents in accordance with the Construction Agreement for the sole purpose of performing the Construction Agreement and not capable of installation and use except as a part of the Work; (c) other reasonable costs for which Contractor is obligated under non-cancellable agreements, even though Contractor has not yet received delivery of the same (but limited as though all Subcontractors have received a notice of termination effective as of the same date and are bound by similar provisions in their Subcontracts); and (d) five percent (5%) of all costs computed under (a) through (c) above; however, (e) minus any amounts due to HTFC from Contractor under the Contract Documents. Contractor shall receive no other payments (and, without limitation, no payment of any Included Items) by reasons of such termination.

20.3 Contractor agrees that the Cancellation Payment will fully and adequately compensate Contractor (and all other Persons claiming by or under Contractor) for all Loss-And-Expense attributable to the termination of Contractor's right to perform this Construction Agreement. After the Termination Date, in HTFC's sole discretion (but without any obligation to do so), HTFC may take any and all actions necessary or desirable to complete the Work so terminated, including, entering into contracts with other contractors, with or without public letting. Unless Section 12.4 applies, this Article shall not apply to any termination of Contractor's right to perform this Construction Agreement under Article 12.

20.4 This Article is intended to supplement and not limit any provisions of the Supplementary Conditions dealing with the subject matter hereof.

ARTICLE 21.

Change Orders; Extra Work

21.1 HTFC may issue Change Orders pertaining to any and all aspects of the Work at any time and for any reason whatsoever, whether and however such Change Orders may revise this Contract, add Extra Work, or require the deletion of Deleted Work.

21.2 Whenever Contractor believes (or has cause to believe) that Extra Work is required, or whenever Contractor performs any Disputed Work (see Section 22.1), Contractor shall deliver to HTFC a notice (the "Change Order Advisory") containing (a) a statement of why the particular Work is Extra Work; and (b) a rough order of magnitude as to the Extra Payment involved and extension of time required (if any). For the avoidance of doubt, Contractor understands that Contractor will receive no Change Orders for Unforeseen Conditions or for any other matter under this Construction Agreement other than Discretionary HTFC Changes or other matters for which this Construction Agreement otherwise makes explicit provision. As used herein a "Discretionary HTFC Change" means Extra Work which materially changes the Base Contract Work and is specifically required by a written order of HTFC describing the same. The Project Manager shall have no authority to issue Discretionary HTFC Changes; and no bulletin, interpretation, advisory, or other document of any kind issued by the Project Manager or any other Government Entity shall be deemed to constitute a Discretionary HTFC Change.

21.3 If HTFC issues a Discretionary HTFC Change, or if Contractor believes that Contractor has encountered Extraordinary Conditions, Contractor shall submit to HTFC a Change Order which shall set forth in sufficient detail all proposed changes in the Work and the reasons therefor. Contractor shall specify, also, whether the Change Order will result in an increase or reduction in the Work Order Price and the amount thereof (which shall be governed by this Article). If HTFC approves, HTFC shall issue a Change Order and Contractor shall implement the particular Change Order in accordance

with HTFC's instructions. Submission of any proposed Change Order by Contractor shall be deemed a representation by Contractor that (a) the Work covered by such proposed Change Order is Extra Work or Deleted Work, as the case may be, which requires an adjustment in the Work Order Price and (b) that the adjustment in the Work Order Price set forth in such proposed Change Order is fair and reasonable and does not include any costs which are not permissible under the Contract Documents. For the avoidance of doubt, HTFC reserves the right to engage one or more Separate Contractors for performance of work or services that would constitute Extra Work if performed by Contractor hereunder, including addressing Extraordinary Conditions.

21.4 Contractor shall undertake and complete promptly all Extra Work authorized under this Article. Subject to Section 22.1, Contractor shall not perform any Extra Work without a Change Order signed by HTFC specifically authorizing Extra Work.

21.5 Without limiting other provisions of this Construction Agreement, Contractor shall not be entitled to any Extra Payment for any Extra Work, if and to the extent required by reason of: (a) Contractor's or any Subcontractor's fault; (b) coordination of Scope Documents, other than lack of coordination resulting from material design defects; (c) development of details inferable from the Scope Documents; (d) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a Contract Drawing and/or Specification; or (e) any risk or obligation assumed by Contractor in the Contract Documents, including Unforeseen Conditions.

21.6 HTFC may request Contractor to submit a price for Extra Work covered by any proposed Change Order. In response, within five Work Days after receipt of any such request, Contractor shall submit a written quotation in a form approved by HTFC.

21.7 If HTFC and Contractor fail to agree upon the amount of Extra Payment due Contractor with respect to proposed Extra Work, HTFC may, in its sole discretion, issue a Change Order requiring such Extra Work, instruct Contractor to continue performance of the Work without the proposed Extra Work (if physically possible), or instruct Contractor to stop the Work. If HTFC issues a Change Order requiring such Extra Work, or if HTFC issues a Change Order without first requesting a quotation pursuant to Section 21.6, Contractor shall proceed immediately with the Extra Work covered by such Change Order; and, unless Contractor and HTFC agree on a lump-sum or unit-price payment, any Extra Payment due Contractor shall be computed on the time and materials basis in accordance with Section 21.8; and in such case Contractor shall notify HTFC by telephone before 3:00 p.m. E.S.T. on any Work Day of all Extra Work to be performed on a time and materials basis which Contractor has scheduled for the next Work Day. If HTFC instructs Contractor to stop the Work, Contractor shall stop Work on the date and to the extent specified by HTFC and take all action as necessary (or as HTFC may direct) to protect and preserve all materials, equipment, tools, facilities and other property and the safety of all Persons connected with the Work or the Project Site.

21.8 Whenever Contractor performs Extra Work on the time and materials basis, HTFC shall pay Contractor the following reasonable costs actually incurred for the following with respect to such Extra Work: (a) necessary materials (including actual costs of transportation to the Site); (b) necessary direct labor; (c) premiums actually paid by the employer for worker's compensation; vacation allowances, union dues, health, welfare, unemployment, and retirement benefits, and payroll taxes, which the employer actually pays on such direct labor; (d) incremental additional costs of Required Insurance and/or Bonds occasioned by performance of such Extra Work; (e) sales and personal property taxes (if any) required to be paid on materials incorporated in such Extra Work, other than those for which exemption is (or should be) allowed under this Contract; (f) actual rental costs of necessary plant and equipment other than small tools (or, in the case of Contractor-owned equipment, the reasonable rental value thereof); (g) necessary installation and dismantling of such plant and equipment (including transportation to and from the Site), if any; and (h) fifteen percent (15%) (the "Change Order Mark-up") in the aggregate on the total of items (a) through (g) for all Included Items of Contractor and all Subcontractors associated with such Extra Work. Where Contractor performs Extra Work on a time and materials basis and Contractor has not submitted full time sheets with its Requisition for same, HTFC will make a provisional payment of 70% of the Extra Payment requested by Contractor in any Requisition with the remaining 30% paid upon HTFC's receipt and verification of full time sheets for such Extra Work, subject to Article 24 and the completion of an audit.

21.9 The Work Order Price shall be reduced if and to the extent that any Change Order, whether for Deleted Work or otherwise, results in any net reduction in Contractor's cost of the Work. If Contractor and HTFC do not agree as to the amount of the reduction, the Work Order Price shall be reduced by an amount equal to the estimated cost of the Deleted Work, computed in accordance with Items (a) through (h) of Section 21.8; provided, however, that if any Change Order

requires both Extra Work and Deleted Work with respect to related items of Work, the applicable Extra Payment (if any) shall be computed only on the actual net increase in Contractor's cost of the Work. However, any savings or decreased costs attributable to Deleted Work shall not be netted against Extra Payment for an unrelated item of Work.

ARTICLE 22.

Disputed Work; Time and Materials Certificate

22.1 If Contractor is of the opinion that any Work ordered to be done as Base Contract Work is instead Extra Work and not Base Contract Work ("Disputed Work"), before proceeding with the particular Disputed Work, Contractor shall give HTFC the Change Order Advisory described in Section 21.2. If Contractor fails to deliver such Change Order Advisory within ten (10) days of HTFC's direction to perform the Disputed Work, Contractor shall be conclusively deemed to have agreed that such Disputed Work is Base Contract Work, and Contractor shall pay, at Contractor's expense, all costs due to the particular Subcontractor(s) by reason of such Disputed Work. If, after receipt of such Change Order Advisory, HTFC does not approve a Change Order for the Disputed Work, Contractor shall not perform the Disputed Work.

22.2 For all Disputed Work performed (after approval of a Change Order by HTFC) and for all Extra Work performed on a time and materials basis, Contractor shall prepare and deliver to HTFC a certificate containing the following: (a) a statement of the number of hours for which workers were actually employed, the wages due such worker, and a brief statement of the categories of work performed; (b) a statement of changes (if any) in the rates and amounts of worker's compensation premiums, state and federal taxes, vacation allowances, and union dues and assessments payable upon any worker's wages; (c) a statement of the amount and character of materials furnished for such Work, the Persons from whom purchased, and amounts payable for the same; and (d) a statement of the equipment used in the performance of such Work, together with the rental (if any) payable for the same.

ARTICLE 23.

Requisitions

23.1 Subject to the terms of this Construction Agreement, HTFC will pay the Work Order Price for each Project after Completion of the applicable Project in accordance with the Payment Schedule set forth in the applicable Work Order. To this end, Contractor shall submit all Requisitions to HTFC (with copies to the Project Manager) upon satisfaction of the conditions set forth in the Payment Schedule. Contractor shall submit to HTFC with each Requisition:

- (a) the Line Item Breakdown, annotated to reflect all Work actually completed to date;
- (b) a list and copies of all permits, licenses and certificates obtained from Government Entities having jurisdiction over the Work not yet submitted with a prior Requisition, if any;
- (c) a partial Waiver of Lien from Contractor and every Subcontractor covering all payments by HTFC pursuant to previous Requisitions, if any;
- (d) a detailed summary of all Change Orders approved and/or requested to date;
- (e) a Work Approval Certification;
- (f) photographs or other documents of completed work in place; and
- (g) any other certification, reports, documentation or information relating to the Work or the Contract Documents required to meet the conditions to payment set forth in the Payment Schedule or which HTFC otherwise reasonably requests or are required by Law.

23.2 Within thirty (30) days after receipt of a Requisition satisfactory to HTFC pursuant to Section 23.1, HTFC will approve or disapprove all or a portion of such Requisition. If HTFC disapproves all or a portion of the Requisition, HTFC will deliver a written statement of any disapproved amounts pursuant to Section 24.3.

23.3 HTFC may withhold payment of all or any portion of a Requisition for the reasons set forth in Sections 24.2 and 24.3 below. However, if, in HTFC's reasonable judgment, other grounds for withholding payment do not concurrently exist, HTFC will pay any portion(s) of the Requisition not then in dispute within thirty (30) days of HTFC's approval of all or the applicable portion of the Requisition.

23.4 With respect to the portion, if any, of the Requisition which HTFC has disapproved, Contractor shall immediately undertake all corrective or other action required by HTFC and shall continue to prosecute the Work expeditiously in accordance with the Contract Documents. If and when HTFC's grounds for withholding payment are removed by judicial determination final beyond appeal, expiration of an applicable limitation period, or written agreement between HTFC and Contractor, HTFC shall pay Contractor the amount so withheld, less any other amounts still subject to withholding under Sections 24.2 and 24.3.

23.5 If HTFC receives notice (or otherwise has good reason to believe) that Contractor has failed to pay any Subcontractor an amount due to such Subcontractor from funds previously paid by HTFC to Contractor (*i.e.*, where the funds due to such Subcontractor were covered by a Requisition previously paid by HTFC), upon demand from HTFC, Contractor shall immediately pay the amount due to such Subcontractor or (if HTFC so specifies) shall return such funds to HTFC with interest at the legal rate from the date when due. In such event, also, HTFC may elect, upon three days' written notice to Contractor, thereafter to issue payments directly to any or all Subcontractors and deduct any and all such payments (including interest thereon) from any amounts due from HTFC to Contractor pursuant to this Contract.

23.6 Whenever requested, Contractor shall submit to HTFC a sworn statement, in form and accompanied by documents satisfactory to HTFC, accounting for the disbursement of funds received from HTFC. No payment by HTFC shall relieve Contractor of any of Contractor's obligations under this Construction Agreement.

23.7 If at any time, taking into account any amounts which HTFC is entitled to withhold and retain under the Contract Documents, HTFC has made payments to Contractor which exceed the aggregate amount then due Contractor under the Contract Documents, Contractor shall repay the excess to HTFC upon demand (or HTFC may, in its discretion, offset the amount of such payment against amounts due Contractor under Contractor's pending or future Requisitions).

ARTICLE 24.

Conditions of Payment; Money Retained Against Claims

24.1 No Requisition shall be payable unless and until Contractor has prepared and submitted to HTFC, and HTFC has approved, the submissions required pursuant to Section 23.1.

24.2 HTFC may withhold and retain the following amounts from payments requested by Contractor: (a) any amount permitted under Section 24.3 from any payment requested in any Requisition; (b) any amounts then due and payable to HTFC under Section 15.1; (c) any Completion Expense due HTFC under Article 12; (d) any amounts due HTFC under Article 6; (e) one hundred twenty-five percent (125%) of the amount of any Lien asserted against HTFC, Benefitted Party(ies), the Work, or the Project Site (or any portion thereof) by any Person claiming by, through or under Contractor which has not been bonded, paid, or otherwise discharged (except to the extent such Lien is asserted as a result of HTFC's failure to pay an undisputed amount properly due under to Contractor under this Contract); and/or (f) any other amount which HTFC may deduct or withhold pursuant to other specific provisions of the Contract Documents.

24.3 HTFC may disapprove and withhold any payment (or any portion thereof) requested in any Requisition if and to the extent that: (a) such Requisition and/or any documents to be delivered therewith are not correct and complete; (b) the Work covered by such Requisition (and/or any previous Requisition) does not comply with the Contract Documents; (c) any condition to payment set forth in the Payment Schedule has not been satisfied; (d) any Person has asserted a claim or secured a judgment against any Indemnatee, the Work or the Project involving any matter covered by Contractor's indemnification under Article 6 and the applicable Required Insurance (if any) may or will not cover the matter (taking into account all previous such judgments, if any); (e) any statement or representation in any Requisition or other document submitted with respect to the Project or the Work (or for purposes of securing this Contract) was materially untrue or incorrect when made; (f) an Event of Default has occurred under Article 12; (g) Contractor has failed to pay any Subcontractor (or any Person claiming by, through, or under Contractor) any amount previously due to such Subcontractor or other Person for which Contractor has previously received payment; and/or (h) such withholding is authorized pursuant to Section 756-a of the New York General Obligations Law.

ARTICLE 25.

Intentionally Omitted

ARTICLE 26.

Completion; Requisition

26.1 "Completion" for each Project shall occur when all of the following conditions have been satisfied for the applicable Project:

- (a) all Work (including any Punch List Work and all Close-Out Requirements) is complete and in compliance with the Contract Documents;
- (b) all Government Entities having jurisdiction have inspected the Work and the Project and have unconditionally authorized all final or permanent permits, licenses, certificates, evidencing the final completion of the Work in accordance with Law and any other approvals specifically required under the Contract Documents;
- (c) Contractor has submitted to HTFC a Requisition, which shall include the submissions required pursuant to Section 23.1 (except that such Requisition shall include a final Waiver of Lien from Contractor and every Subcontractor covering all payments by HTFC pursuant to previous Requisitions, if any), with respect to Completion; and
- (d) Contractor has delivered to HTFC a written statement of any Surety (in form and substance satisfactory to HTFC) to the effect that HTFC's payment of the unpaid balance of the Work Order Price shall not modify or discharge any obligations of the Surety under the Bonds.

26.2 When Contractor believes that the Work is complete in compliance with the Contract Documents, Contractor shall submit to HTFC a written notice stating that in Contractor's estimation the Work has been completed in compliance with the Contract Documents ("Completion Notice"). Upon HTFC's receipt of the Completion Notice, HTFC shall perform an inspection for the purposes of determining whether the Work is so performed. Such inspection shall commence within ten days of receipt of Completion Notice by HTFC and shall be completed with due diligence and in any event within fifteen (15) days of commencement of such inspection. If HTFC identifies repairs, corrections and adjustments to the Work or incomplete aspects of the Work (collectively, "Punch List Work") that remain to be completed, Contractor shall undertake and complete same. When HTFC finds upon inspection that the Work (including any Punch List Work and the Close-out Requirements) is complete, HTFC shall issue to Contractor a certificate of Completion.

26.3 Upon Completion, Contractor may submit to HTFC a Requisition for the unpaid balance of the Work Order Price. Within thirty (30) days after submission of a satisfactory Requisition pursuant to this Section, HTFC shall pay Contractor the unpaid balance of the Work Order Price, less any amounts then withheld under Article 24 (the "Final Payment").

26.4 Contractor's acceptance of Final Payment shall be construed as Contractor's complete, unconditional and general release of HTFC and all Indemnitee(s) by Contractor (and all Persons claiming by, through, and/or under Contractor) with respect to all payments of the Work Order Price or any other amounts due Contractor connected with, or arising out of, the Contract Documents or the Work, except for Contractor's claim for any amount then withheld under Article 24. This Section shall not be construed to revive any claim previously waived by Contractor under other provisions of the Contract Documents.

ARTICLE 27.

No Claim for Delay Damages

27.1 If acts or omissions of HTFC that constitute an Excusable Delay cause Contractor to experience Excusable Delays prior to Completion (such delays, "Sec. 27.1 Delays") exceeding thirty (30) days in the aggregate; and if, by reason of such Sec. 27.1 Delays, Contractor incurs additional out-of-pocket costs for labor, materials and/or third-party services which Contractor would not have incurred but for such Sec. 27.1 Delays; and if Contractor has given HTFC Delay Notices within the time specified in Section 18.1 describing the acts or omissions of HTFC which caused the respective Sec. 27.1 Delay(s); and if Contractor has taken action to avoid or mitigate such additional costs to the extent possible; then HTFC shall reimburse Contractor for the reasonable actual additional direct out-of-pocket costs of labor, materials and/or third-party services (without markup for any Included Items) incurred by Contractor from and after the end of such thirty (30) day period by reason of such Sec. 27.1 Delays exceeding thirty (30) days in the aggregate. Contractor agrees that Contractor has experienced no Sec. 27.1 Delays prior to the signing of this Construction Agreement.

27.2 Except for extensions of time under Article 18 and subject to Sections 17.2 and 27.1: (a) Contractor alone hereby specifically assumes the risk of all delays in the Work (or the performance thereof) of any kind of duration, whether Excusable Delays or otherwise, and whether or not within the contemplation of the parties and whether foreseeable or unforeseeable and all Loss-And-Expense attributable thereto; and (b) Contractor agrees to make no claim for damages for delay in the Work (or the performance thereof) of any kind whatsoever, whether foreseeable or unforeseeable and agrees that any such claim shall be compensated for solely by an extension of time to complete performance of the Work. Contractor shall have no right to rescind or terminate this Contract and Contractor shall have no cause of action under any theory of quasi-contract or quantum meruit, by reason of any delay of any kind or duration whatsoever.

ARTICLE 28. Certain Obligations of Contractor Upon Termination or Completion

28.1 Upon a termination of Contractor's right to perform the Construction Agreement under Article 12 or Article 20, Contractor shall:

- (a) stop Work on the date and to the extent specified by HTFC;
- (b) take all action as necessary (or as HTFC may direct) to protect and preserve all materials, equipment, tools, facilities and other property and the safety of all Persons connected with the Work or the Project Site;
- (c) deliver to HTFC promptly complete copies of all Subcontracts, together with a statement of (i) the items ordered and not yet delivered pursuant to each agreement; (ii) the expected delivery dates of all such items; (iii) the total cost of each agreement and the terms of payment; (iv) the estimated costs of canceling each agreement; and (v) sums paid under contracts and all other sums due and outstanding; and, at HTFC's option, Contractor shall either terminate or assign to HTFC Contractor's rights under each Subcontract and make no additional agreements with Subcontractors with respect to the Work or the Contract Documents;
- (d) deliver to HTFC promptly a correct and complete list of all supplies, materials, machinery, equipment and other property previously delivered by Contractor or any Subcontractor but not yet incorporated into the Work;
- (e) give written notice promptly to every Surety which has issued a Bond (with a copy of each such notice to HTFC);
- (f) as directed by HTFC, transfer free and clear title to HTFC or Benefitted Party(ies) (as directed by HTFC) by appropriate instruments of title, and deliver to the Project Site (or such other place as HTFC may specify), all property paid for by HTFC (or, if required under Section 12.2, any other property);
- (g) notify HTFC promptly in writing of any Legal Proceedings against Contractor by any Subcontractor relating to the termination of the Work or otherwise;
- (h) deliver to HTFC promptly all plans, drawings, manuals, books, records, and other documents which the Contract Documents would otherwise have required Contractor to deliver to HTFC prior to (or upon) Completion;
- (i) give written notice promptly (if required) under each policy of Required Insurance (with a copy of each such notice to HTFC), but continue to maintain any policy of completed operations coverage for the period required under Schedule B; and
- (j) take such other actions, and execute such other documents, as HTFC may reasonably request to effectuate and confirm the foregoing matters, or as may be necessary or desirable to minimize HTFC's costs, and take no action which will increase any amount payable by HTFC under the Contract Documents.

28.2 Upon Completion, or upon a termination of Contractor's right to perform the Work under Article 12 or Article 20, Contractor shall: (a) unless HTFC directly or otherwise takes possession of and uses the same under Section 12.2, promptly remove from the Project Site all equipment, implements, machinery, tools, temporary facilities of any kind

and other property owned, leased, or rented by Contractor, and repair any damage caused by such removal; (b) provide for the termination and removal of any temporary utilities or other services used in connection with the Work; (c) clean the Project Site, the Work and all areas of the Project Site previously occupied by Contractor, and leave the same in a neat and orderly condition; (d) complete and comply with all other Close-Out Requirements; and (e) promptly cause all Employees of Contractor and any Subcontractors to vacate the Project Site.

28.3 If Contractor fails to comply with any obligation under this Article, HTFC may perform the action contemplated after five (5) Work Days' prior written notice to Contractor; and, at HTFC's election, HTFC may deduct the entire cost (or any portion thereof) from the unpaid balance of the Work Order Price; or Contractor shall pay the entire cost (or any portion thereof) upon demand, notwithstanding that any other Person may have defaulted in taking similar action or occupied the same areas or otherwise had any responsibility for the condition involved. Contractor shall have no right to further payments under any Requisition until Contractor has complied with all obligations under this Article.

ARTICLE 29.

Miscellaneous

29.1 The Contract Documents embody the entire agreement and understanding of the parties and supersede all prior proposals, agreements and understandings relating to the subject matter hereof.

29.2 Except as set forth in Article 5, Contractor shall not assign or delegate this Contract, the Contract Documents, or any of Contractor's rights, payments, liabilities, or duties under this Contract or the Contract Documents, or any part thereof (or subcontract or delegate the Work, or any part thereof) without the prior written consent of HTFC in each case, which HTFC may withhold for any reason whatsoever. Any such assignment, subcontract, or delegation without HTFC's prior written consent (including any assignment or transfer by operation of law or any transfer of control of Contractor) shall be void against HTFC.

29.3 All the terms of the Contract Documents, whether so expressed or not, shall be binding upon the respective permitted successors and assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and by their respective permitted successors and assigns. The headings of the Contract Documents are for purposes of reference only and shall not limit or otherwise affect the meaning thereof. This Contract may be executed (a) in counterparts, a complete set of which shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

29.4 If any court determines that any provision of the Contract Documents is illegal or unenforceable, the Contract Documents shall remain in effect in accordance with their terms, excluding the provision declared illegal or unenforceable.

29.5 Nothing in this Contract is intended, nor shall anything herein be construed, to deem HTFC and Contractor to be joint venturers or partners with respect to any activity whatsoever.

29.6 Contractor agrees that no members, directors, trustees, managers, officers, or other Employees of HTFC shall have any personal liability for any amounts or obligations owing to Contractor or any Subcontractors under or with respect to the Contract Documents. The liability of HTFC for HTFC's obligations under this Construction Agreement will be limited to HTFC's title and interest in and to the Project.

29.7 Unless and until HTFC gives Contractor notice to the contrary, throughout all Projects, Contractor shall work with and take direction and instruction from the Project Manager (except that all written approvals and Change Orders must be signed by HTFC's authorized representative). Contractor shall submit to the Project Manager copies of all submissions and deliveries of documents and other materials which Contractor is required to submit to HTFC under the Contract Documents. For the avoidance of doubt, references to "HTFC" in the Contract Documents shall also be deemed to be references to the Project Manager unless specifically stated otherwise.

ARTICLE 30.

Organizational Representations

30.1 Contractor represents and warrants to HTFC as follows:

(a) Contractor is the type of legal entity specified in the Construction Agreement, duly organized, validly existing and in good standing under the laws of the state specified in the Construction Agreement;

(b) the execution and delivery of this Contract, and the performance by Contractor of all its obligations thereunder, have been duly and effectively authorized by all necessary action on the part of Contractor, and this Contract has been duly executed and delivered by authorized representatives of Contractor;

(c) neither Contractor nor any of its Employees has offered or given any gratuity to an Employee of HTFC or of the State of New York to secure this Contract or to secure favorable treatment with respect thereto; and

(d) there are no judgments, actions, suits, or proceedings existing or pending (or, to the knowledge of Contractor's officers, threatened) against Contractor which can reasonably be expected to have a material adverse effect upon its performance of the Contract.

ARTICLE 31.

Notices

31.1 All notices, requests, demands, elections, consents and other communications of any kind whatsoever ("notices") which may or must be given under the Contract Documents shall be addressed to Contractor, HTFC and the Project Manager at the addresses set forth in the applicable Work Order. Any notice required by the Contract Documents to be given or made in writing within a specified period of time or on or before a date certain must be transmitted either by hand delivery (which may include commercial delivery service) subject to written receipt, or by U.S. Express, registered or certified mail, return receipt requested and postage and registry fees prepaid. All notices shall be deemed given when received (or date of attempted delivery if refused). Either party (or the Project Manager) may change its address for notices by written notice to the other party which complies with the foregoing requirements.

ARTICLE 32.

Funding Source; Other Assignments

32.1 Contractor hereby consents to the assignment of the Contract Documents, and/or any part of HTFC's interest therein, to any Government Entity, pension trust or other financial institution which makes, or participates in, a grant, loan, or contribution to finance the Project, whether or not such loan is secured by an Encumbrance, whether directly or collaterally (each a "Funding Source").

32.2 Each assignment pursuant to Section 32.1 shall be subject to the condition that either:

(a) HTFC shall agree in writing with Contractor to remain responsible for the full performance of all obligations of HTFC under the Contract arising prior to the date of such assignment and the assignee shall agree in writing with Contractor to assume all obligations of HTFC under the Contract arising from and after the date of such assignment; or

(b) the assignee shall assume all responsibility and liability for the performance of all obligations of HTFC under the Contract, including any obligations arising prior to the date of such assignment.

32.3 Upon HTFC's written request, and subject to Contractor's approval (not to be unreasonably withheld or delayed), Contractor shall execute any documents or instruments which any Funding Source or other assignee may reasonably request to confirm and effect Contractor's agreements in this Article, provided such documents are consistent with Section 32.2 above.

ARTICLE 33.

Benefited Party(ies); Third Party Beneficiary

33.1 It is a precondition to the award of any Work Order that the applicable Benefitted Party(ies) shall have executed and delivered to HTFC a Direct Beneficiary Grant Agreement with respect to the applicable Work.

33.2 Contractor agrees that Benefitted party(ies) is a third-party beneficiary of, and shall have the right to directly enforce, Contractor's obligations under the Contract Documents, although nothing contained in the Contract Documents shall create (or be deemed to create) any relationship of contract or agency between Benefitted Party(ies) and

Contractor (or any Subcontractor). No dealings of any kind whatsoever between Benefitted Party(ies) and Contractor shall be deemed a waiver of the foregoing (unless Benefitted Party(ies) and HTFC specifically agree otherwise in writing). Upon HTFC's request, Contractor shall furnish to Benefitted Party(ies) any submissions, services, or other Work which the Contract Documents require Contractor to furnish to HTFC (in addition to any matters which the Contract Documents direct specifically to Benefitted Party(ies)).

33.3 Contractor agrees to allow Benefitted Party(ies): (a) the right to participate in meetings concerning the Work; and (b) every reasonable, safe and proper facility for inspecting the Work at the Project Site and for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation. Contractor shall coordinate all logistics, staging and storage area(s) with the Project Manager and Benefitted Party(ies).

33.4 Each Indemnitee is a third-party beneficiary of, and shall have the right to directly enforce, Contractor's obligations under the indemnity and insurance provisions of the Contract Documents.

EXHIBIT A

FORMS OF PARTIAL WAIVERS OF LIEN FOR CONTRACTOR AND SUBCONTRACTOR

Payments Received through date hereof: \$_____

CONTRACTOR'S PARTIAL RELEASE AND WAIVER OF LIEN

PARTIAL RELEASE AND WAIVER OF LIEN dated as of _____, 20__ made by _____ ("Contractor") to and for the benefit of _____, a _____ with its principal office at _____ ("HTFC") pursuant to an agreement dated as of _____ (the "Contract") covering the Work for the Project known as _____ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Partial Release and Waiver of Lien is given in connection with the payment to Contractor of sums heretofore requisitioned by Contractor for Work supplied, furnished or performed for the Project. Contractor hereby certifies and acknowledges that, as of the date hereof, Contractor has received payments in the aggregate amount of _____ Dollars (\$_____) for Work performed, furnished or supplied for the Project, and that such payments constitute all sums due and owing to Contractor in accordance with the Contract up to and including the date hereof, except as expressly provided in the following paragraph.

IN CONSIDERATION OF, AND TO THE EXTENT OF, SUCH PAYMENT, Contractor (for itself and its successors and assigns) does hereby release and waive any and all rights, claims, and demands which Contractor has or may have against HTFC and the State of New York (the "State") (including any rights which Contractor has or may have pursuant to the New York Lien Law or otherwise to file any Lien or notice of Lien against the Project or any property of HTFC or the State), on account of or deriving from Work supplied, furnished, or performed for the Project to and including the date hereof, other than (1) unpaid amounts of prior requisitions which were properly prepared and submitted and which HTFC does not dispute; (2) pending claims of which Contractor has given proper written notice to HTFC in accordance with the Contract; and (3) pending Change Orders identified in the schedule accompanying this Partial Release and Waiver of Lien.

This Partial Release and Waiver of Lien shall not affect the right of Contractor to recover compensation for Work supplied, furnished or performed by Contractor for the Project to the extent that compensation for such Work is not included within the aggregate amount identified above, but is included within categories (1)-(3) in the immediately preceding paragraph.

IN WITNESS WHEREOF, Contractor has caused this Partial Release and Waiver of Lien to be duly executed as of the date first set forth above by its undersigned officer who is duly authorized to do so.

(INSERT NAME OF CONTRACTOR)

By: _____
Name:
Title:

Subscribed and sworn to before me this
___ day of _____, 20__.

Notary Public

Payments Received through date hereof: \$_____

SUBCONTRACTOR'S PARTIAL RELEASE AND WAIVER OF LIEN

PARTIAL RELEASE AND WAIVER OF LIEN dated as of _____, 20__, made by _____ ("Subcontractor") to and for the benefit of _____, a _____ with its principal office at _____ ("HTFC") and of _____ ("Contractor") pursuant to an agreement between Subcontractor and HTFC [or between Subcontractor and Contractor as agent of HTFC] dated as of _____, 20__ (the "Contract") covering the _____ work for the project known as _____ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Partial Release and Waiver of Lien is given in connection with the payment to Subcontractor of sums heretofore requisitioned by Subcontractor for Work supplied, furnished or performed for the Project. Subcontractor hereby certifies and acknowledges that, as of the date hereof, Subcontractor has received payments in the aggregate amount of _____ Dollars (\$_____) for Work performed, furnished or supplied for the Project, and that such payments constitute all sums due and owing to Subcontractor in accordance with the Contract up to and including the date hereof, except as expressly provided in the following paragraph.

IN CONSIDERATION OF, AND TO THE EXTENT OF, SUCH PAYMENT, Subcontractor (for itself and its successors and assigns) does hereby release and waive any and all rights, claims, and demands which Subcontractor has or may have against HTFC, Contractor and/or the State of New York (the "State") (including any rights which Subcontractor has or may have pursuant to the New York Lien Law or otherwise to file any Lien or notice of Lien against the Project or any property of HTFC, Contractor or the State), on account of or deriving from Work supplied, furnished, or performed for the Project to and including the date hereof, other than (1) unpaid amounts of prior requisitions which were properly prepared and submitted and which neither HTFC nor Contractor dispute; (2) pending claims of which Subcontractor has given proper written notice to HTFC and Contractor in accordance with the Contract; and (3) pending Change Orders identified in the schedule accompanying this Partial Release and Waiver of Lien. "Work" means labor, materials and supplies, furnished or performed by or through Subcontractor with respect to the Project.

This Partial Release and Waiver of Lien shall not affect the right of Subcontractor to recover compensation for Work supplied, furnished or performed by Subcontractor for the Project to the extent that compensation for such Work is not included within the aggregate amount identified above but is included within categories (1)-(3) in the immediately preceding paragraph.

IN WITNESS WHEREOF, Subcontractor has caused this Partial Release and Waiver of Lien to be duly executed as of the date first set forth above by its undersigned officer who is duly authorized to do so.

(INSERT NAME OF SUBCONTRACTOR)

By: _____
Name:
Title:

Subscribed and sworn to before me this
___ day of _____, 20__.

Notary Public

EXHIBIT B

FORMS OF FINAL WAIVERS OF LIEN FOR CONTRACTOR AND SUBCONTRACTOR

Total Payments Received: \$ _____

CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

FINAL RELEASE AND WAIVER OF LIEN dated as of _____, 20__ made by _____ ("Contractor") to and for the benefit of HTFC and the Governor's Office of Storm Recovery ("Owner") pursuant to an agreement dated as of _____ (the "Contract"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Final Release and Waiver of Lien is given in connection with the completion of services under this Contract and in consideration of \$ _____ in **Full Payment** of all sums due under the Contract. This Full Payment amount includes the **Final Payment** amount of \$ _____, which has been requested by Contractor and will be released upon execution of the Final Release and Waiver of Lien.

For Owner's benefit, Contractor does hereby certify and acknowledge that:

- (i) Contractor has supplied Owner with a list of all subcontractors and/or suppliers of any level or tier that have supplied, furnished, or performed services under this Contract and that such list is true and complete as of the date hereof;
- (ii) Upon receipt of the requested Final Payment amount, Contractor has received all sums due and owing to Contractor for all services performed, furnished, or supplied by Contractor under the Contract;
- (iii) Contractor has paid all subcontractors and/or suppliers for all services performed; and
- (iv) All GOSR-owned property and/or equipment acquired on behalf of GOSR, as well as all security badges and keys, and all proprietary, classified and/or confidential/sensitive information in the possession of Contractor and/or subcontractors and/or suppliers of any level or tier, has been returned to GOSR.

In consideration of such Full Payment:

Contractor (on behalf of Contractor and its successors and assigns) does hereby forever release and waive any and all rights, claims and demands which Contractor has or may have against Owner, the State of New York (the "State"), and any Program applicants or other third party beneficiaries (including any rights pursuant to the New York Lien Law to file any Lien or notice of Lien against any property of Owner or the State or any Program applicants or other third party beneficiaries) on account of or deriving from any services supplied, furnished, or performed; and

Contractor agrees to indemnify and hold harmless (including reimbursement of attorneys' fees and other litigation or dispute resolution costs) Owner, the State of New York, HTFC, and any Program applicants, Indemnitee(s) or other third party beneficiaries (including their respective successors, affiliates and assigns) from and against any and all rights, claims and demands (including any rights pursuant to the New York Lien Law to file any Lien or notice of Lien) of any subcontractors and/or suppliers of any level or tier, on account of or deriving from services supplied, furnished or performed by any such subcontractors and/or suppliers.

IN WITNESS WHEREOF, Contractor has caused this Final Release and Waiver of Lien to be duly executed as of the above date by the undersigned officer of Contractor who is duly authorized to do so.

(INSERT NAME OF CONTRACTOR)

By: _____

Name:

Title:

Subscribed and sworn to before me this
___ day of _____, 20__.

Notary Public

Total Payments Received: \$ _____

SUBCONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

FINAL RELEASE AND WAIVER OF LIEN dated as of _____, 20____, made by _____ ("Subcontractor") to and for the benefit of _____, a _____ with its principal office at _____ ("HTFC") and of _____ ("Contractor") pursuant to an agreement between Subcontractor and HTFC [or between Subcontractor and Contractor as agent of HTFC] dated as of _____, 20_ (the "Contract") covering the _____ work for the project known as _____ (the "Project"). Unless otherwise specified herein, words and phrases defined in the Contract shall have the same meanings in this instrument.

This Final Release and Waiver of Lien is given in connection with the construction of the Project and in consideration of \$ _____ in full payment of all sums due under the Contract.

For the benefit of HTFC and Contractor, Subcontractor does hereby certify and acknowledge: (i) that Subcontractor has supplied HTFC and Contractor with a list of all subcontractors and vendors supplying, furnishing or performing Work for the Project and that such list is true and complete as of the date hereof; (ii) that upon receipt of the above-described payment, Subcontractor has received all sums due and owing to Subcontractor for all Work performed, furnished or supplied by or through Subcontractor for the Project; and, in consideration of such payment, Subcontractor (for Subcontractor, its successors and assigns) does hereby forever release and waive any and all rights, claims and demands which Subcontractor has or may have against HTFC, Contractor and/or the State of New York (the "State") (including any rights pursuant to the New York Lien Law to file any Lien or notice of Lien against the Project or any property of HTFC, Contractor or the State) on account of or deriving from any Work supplied, furnished or performed for the Project; and Subcontractor agrees to indemnify and hold harmless HTFC, Owner, State of New York, and all Indemnitee(s) from and against any and all rights, claims and demands of any subcontractors or vendors on account of or deriving from Work supplied, furnished or performed by any such subcontractor or vendor for the Project. "Work" means labor, materials and supplies, furnished or performed by or through Subcontractor with respect to the Project.

IN WITNESS WHEREOF, Subcontractor has caused this Final Release and Waiver of Lien to be duly executed as of the date first set forth above by the undersigned officer of Subcontractor who is duly authorized to do so.

(INSERT NAME OF SUBCONTRACTOR)

By: _____
Name:
Title:

Subscribed and sworn to before me this
___ day of _____, 20____.

Notary Public